

VOLUME VI, NUMBER 2, SPRING 2006

CLAREMONT

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A Journal of Political Thought and Statesmanship

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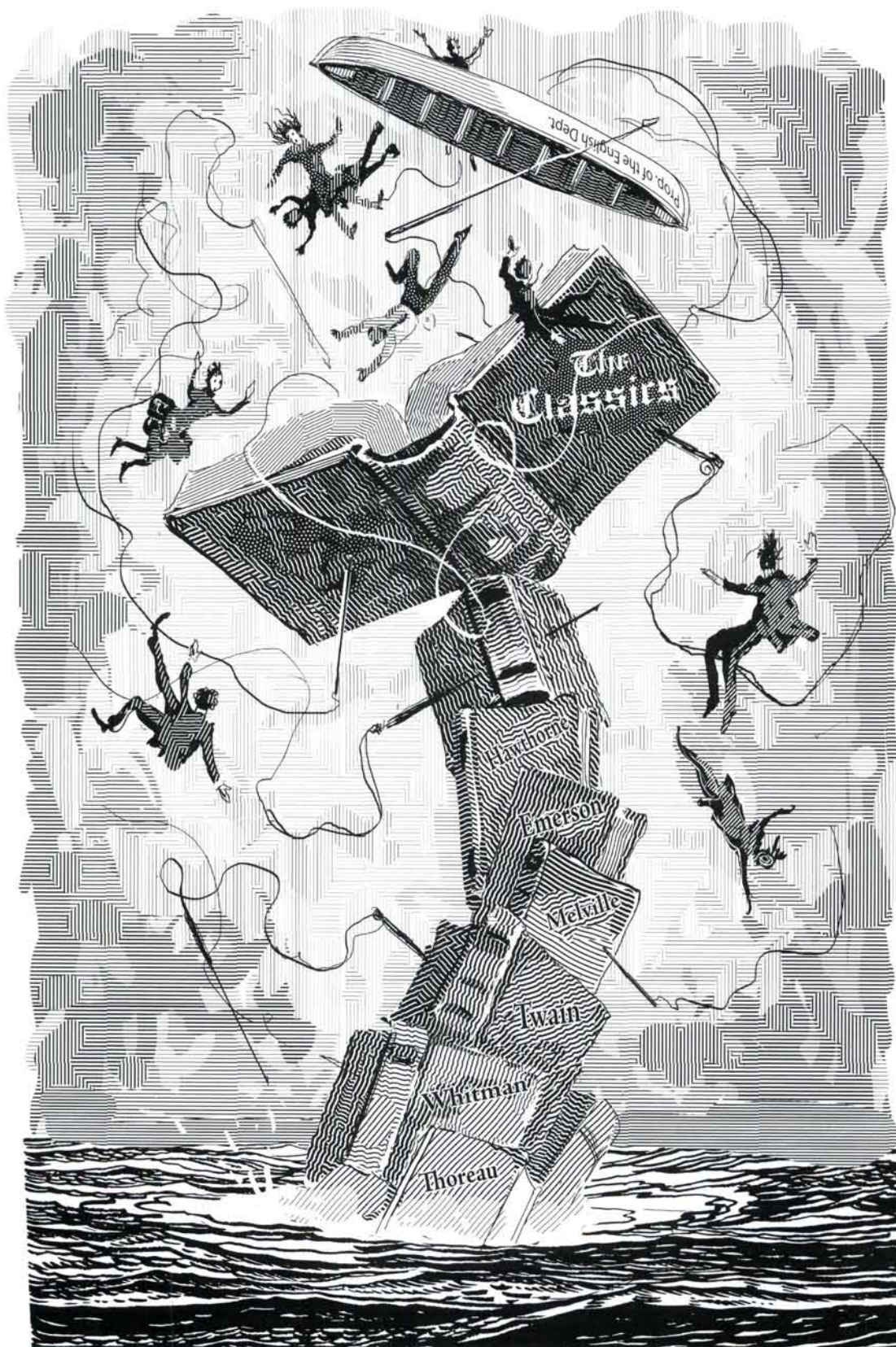
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FROM THE EDITOR'S DESK

HARD QUESTIONS

by Charles R. Kesler

IT'S TOO EARLY TO WRITE THE BUSH ADMINISTRATION'S EPITAPH, but at the moment the 2006 midterm elections are looking rather grim. The Democrats aren't resurgent, exactly; if anything, they look less formidable than in 2004. But the Republicans are in definite disarray. For the first time since 1994, they seem skittish, diffident, and increasingly divided on domestic as well as foreign policy.

In a way, this is a tribute to their success. Having faced down the Soviet Union, reformed welfare (by eliminating, for the first time since the New Deal, a federal entitlement program), cut tax rates again and again and again, and begun to reform the wayward judiciary, Republicans have accomplished many of the tasks that Ronald Reagan outlined in 1980. Their problem is that these victories have brought them to the threshold of another major battle. Having solved (to the extent that any human problems can be "solved") the immediate problems that precipitated their election, they now face intractable problems and deep-seated disagreements that demand nothing less than a fundamental renewal of conservative statesmanship.

But the ability to see beyond the formulas of the recent past, to deepen the critique of liberalism, to steel conservatism for the uphill fight—these virtues are in short supply among GOP candidates in 2006, not to mention 2008.

Here are some of the hard questions that conservatives now, or at any rate soon will, confront.

Entitlements. President Bush made a valiant run at Social Security reform last year, but his efforts were undercut by his own lack of credibility on the subject. After all, having two years earlier added the first major entitlement program since the Great Society—the Medicare prescription drug benefit—to the federal government's obligations, it was a little late to begin worrying about how to pay for it all. In 2004, Social Security, Medicare, and Medicaid consumed 8.4% of the national economy; by 2030, that figure is projected to rise to 14% or more. If not offset by cuts, the surge in entitlements would raise the federal government's spending from about one fifth to one quarter of gross domestic product, and bring government spending at all levels to almost one half of the economy.

Yet it isn't the cost of entitlements that's the main problem. Far worse is the dependency they breed and the mentality they encourage: that our most important rights come from government, and that rights like these trump all other considerations of the common good.

Keeping government constitutional. The modern regulatory state operates at the borders of constitutionality and often crosses them. From the beginning, there were constitutional problems. Could Congress delegate its legislative powers to rules-writing agencies in the executive branch? The correct answer is No, generally speaking, but since the New Deal the Supreme Court has given its blessing to the practice. Thus today's administrative agencies combine legislative and executive, and often judicial, power in the same hands—the "very definition of tyranny," as *The Federalist* put it. Still, in most cases tyranny is avoided or at least tempered by congressional oversight and by administrative law, a new kind of law that grew up precisely to restrain the administrative state.

Regulation's costs and inefficiencies are lamentable, but the deeper issue is the Constitution's fading authority. Conservatives need to breathe new life into the separation of powers without succumbing to modern-day abolitionism and calling for the dismantling of all federal agencies. A place to start may be with those agencies that not only regulate but tax on their own authority. The Federal Communications Commission taxes long-distance phone calls, for instance, to meet its own budgetary needs, which—surprise surprise—grow constantly. In a decade, the FCC has increased the tax from 3 to 11%. Republicans need to stand up and say: No taxation without representation.

But the larger task of reconstitutionalizing American government will not be so easy, because it will require a profound rethinking of government's purposes and limits.

Civic education. Important as the debate about immigration policy is, it is much ado about nothing if politics cannot address what immigrants, and citizens as well, are taught about America. The question concerns public schools from kindergarten to the postgraduate level, and raises delicate questions of academic freedom and multiculturalism, which is why Republicans stay miles away from the issue. But it does no good to craft a superior immigration bill if new Americans, like the old, have their patriotism subsequently subverted (whether deliberately or not) in the public schools.

These and many other hard questions lie ahead for Republicans and conservatives. If they cannot come to grips with them, they cannot prevail in the long term as an electoral majority. More importantly, they will forfeit the chance to save their country.

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THE REAL BEN FRANKLIN

Benjamin Franklin's *Autobiography* is not the devious and "conscious manipulation of his own persona" that Jerry Weinberger claims it is in his essay "American Idol" (Winter 2005/06). Tailoring his memoirs to provide a good model for his intended audience—his own progeny and, by inference, other young people in America—he put some things in, left some out, and gave slanted accounts of others. The result, though, is not basically false or misguided. I served as co-editor of the Yale edition of *The Autobiography*, which appeared after the first six edited volumes of Franklin's *Papers*—documenting the years of his life covered in *The Autobiography*—had been published. We thus had the facts of his life before us, and we found no more than a few, trivial places where *The Autobiography* was inaccurate (all noted in that edition). Weinberger terms the two letters written by Franklin's friends urging him to continue his *Autobiography* "absurdly bombastic" and "hilariously hyperbolic." In truth, the missives are entirely in the conventional style of letters of the time written to an older and distinguished person.

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Nor was Franklin anything like the "political elitist and fixer" that Weinberger makes him out to be. When he arrived in London, Franklin immediately understood that the British ministry thought that "The King was the legislator for the colonies"; and he concluded that should British authorities prove adamant (as they did), Pennsylvania and the other colonies would have to leave what he finally called "an old, rotten state." He engaged in many subtle and adroit maneuvers, not in the disgraceful or unrepugnant way Weinberger implies, but in a wise, principled, even clever way, quite in accord with the ideals of the American Revolution, of which he is a legitimate hero.

Weinberger also misunderstands Franklin's relationship to slavery. He was only a bit player in working out the three-fifths compromise (the language came from Continental Congress usage). There is no reason to doubt Franklin's earnestness in the anti-slavery petition (he was much on record already opposing slavery)—in fact, in the very last month of his life, he wrote for a Pennsylvania newspaper a lively, slashing hoax ridiculing a speech by the very Southern congressman who had opposed the petition Franklin had signed.

Ralph Ketcham
Syracuse University
Syracuse, NY

Behind Benjamin Franklin's carefully wrought graven image there lurks, according to Jerry Weinberger, "a serious thinker who, though he wore a leather apron, philosophized not with a hammer but a joke." Weinberger's Franklin observes the world with disenchanted eyes, but with this difference: each man's closet nihilism is draped to suit his distinct private purposes. Franklin was in it for the pleasure of playing "the grand game of modernity,"

as Weinberger terms it. As with chess, or with the construction of arithmetical magic squares and circles, or with charming and disarming conversation, he was good at it. He loved challenges and even more his success in mastering them, sometimes with subtlety but always with panache.

But does this reading account for, let alone do justice to, Franklin's astonishing *achievements*? Can one leave it at his "apparent dedication to public service"? Even if he was an Olympic-class voyeur, amateur, and gamesman, these qualities by themselves leave unanswered the question, what did Ben really care about? He cared for America, first as the jewel in the imperial crown, then as a jewel in its solitaire setting. He also cared for Philadelphia, for which he labored tirelessly (both before and after his retirement from business) on behalf of its inhabitants' security and quality of life. Turning to his sundry projects, this savvy man of affairs was well served by his clarity of mind. In confronting any particular situation, condition, or impasse, he steered clear of the commonplaces and certitudes that were the stuff of ordinary discourse. These, he thought, were less shortcuts to truth than barriers to understanding and peaceful resolution. Just about any ringing abstract claim invites its equally assertive counterclaim. The colonists' claim of rights elicited the Parliament's claim of its rights; the arguments used by Britain could as well—and as absurdly—be used (in Franklin's famous hoax) by the "King of Prussia" in reasserting his rights against the English descendants of his Saxon subjects.

Franklin's famous "strategy of humility" aimed at getting people off their doctrinal high horses. With their feet more solidly planted on earth, they might engage fruitfully with one another and with the world as it is. He counseled that we ought neither to accept passively the cards we

are dealt by accident or Providence, nor curse them, nor ignore them. Instead, he urged that we focus our attention on whatever lay within our grasp and means. Caring so deeply about *human* providence, Franklin made it his business to help others try their hand as well.

Ralph Lerner
The University of Chicago
Chicago, IL

Jerry Weinberger has worked hard to pull off Franklin's mask, but in the process he has distorted Franklin's face almost beyond recognition. Weinberger rightly finds Franklin full of sly, playful irony, but he erroneously imagines that behind the charming persona stands nothing but a coldly detached thinker and "above all else a political elitist and fixer and something of a cool opportunist," devoid of any belief in justice, convinced that the very distinction between virtue and vice is chimerical. In short, "the Hero of Public Service is a myth." What evidence does Weinberger adduce for such astonishing charges? He cites only the ubiquity of Franklin's unsparing humor and an adolescent essay that denies the existence of free will. But before concluding that Franklin had no commitment to justice, Weinberger would do well to consider more carefully the bitter sarcasm into which Franklin's humor descended during his long, fruitless struggle to win from the British court fair treatment for Americans. Even more telling is the insuperable bitterness that engulfed Franklin's affection for his loyalist son William. Franklin believed that William had betrayed his father, his country, and the just cause to advance his own fortunes. Laughter can be revealing, as Weinberger says, but the moments at which we cannot laugh are most revealing of all.

These dark moments were rare



for Franklin not because he lacked moral principles but because those very principles gave him a deep affection for simple decency and a supreme vantage point from which to laugh at the pretenses and self-deceptions that surround most efforts to be moral—including many of his own. That vantage point was not attained all at once. In his early essay on liberty and necessity, Franklin did conclude that the metaphysical difficulties with the doctrine of free will made the distinction between virtue and vice an empty one. But a little more experience and reflection soon persuaded him that this conclusion was absurd. He saw that some ways of living are decisively wiser and better than others because they are truly fairer and more beneficial for all concerned. These wise habits he called virtues, and he spent his life trying to cultivate them in himself and teaching the good sense of living virtuously to others. In particular, he taught that virtue need not be a sour, gloomy affair or a ridiculous hypocrisy. He thought he had learned from Socrates that the dictates of true virtue and the requisites of true happiness are one and the same, but whether virtue and happiness converge quite so easily as he believed is a question that Socrates would surely have suggested Franklin ponder more deeply.

Lorraine Smith Pangle
University of Texas at Austin
Austin, TX

Jerry Weinberger's Franklin may seem controversial to historians, but his theme that "our commonsensical concepts of morality...make no logical sense, despite the fact that they seem so obvious" is a staple argument of Straussian thinkers. Weinberger follows Leo Strauss's teaching that all philosophers starting with Plato must confront the conflicting claims made by reason and revelation. This means that no moral opinion is safe from philosophic scrutiny, including natural rights and social compact theory.

Weinberger suggests that because Franklin did not believe in natural rights, he did not think that they were supported by reason as the most useful foundation for society. But natural-rights theory may be grounded in empiricism, and bolstered by what Locke calls "ascending degrees of probability." Rational men can then posit, without being dogmatic, that certain natural laws govern the world. This twin foundation of natural rights is the genius of the theory. The difficulty in understanding Franklin's own thoughts about natural rights and social compact theory is that he speaks of them selectively, though he indeed speaks of them.

There is reason to believe that Franklin's use of natural rights was selective because he thought that too often they were asserted in a way that led people to think that there were no natural duties. If there is one message that Americans, including Mark Twain, have received from Franklin, it is that they *do* have natural duties. Franklin himself does not hesitate to remind others of these duties, and his private letters and early writings are saturated with admonitions to virtue. Franklin writes that it is honor and shame that provide order in society by leading men to virtue. He thought marriage important to the nation and called it "the most natural State of Man." Weinberger de-emphasizes all of this, undermining the virtues Franklin tried to teach.

Perhaps Weinberger's most controversial assertion about Franklin is that he had no political principles and wasn't concerned with forms of government, whether monarchic or democratic. But if Franklin's philosophy and natural science led him to reject ordinary moral opinion, they may have also led him to think that there was an optimal theory of politics and economics that would support those political principles critical to furthering his own philosophic project.

Kevin Slack
Irving, TX

Jerry Weinberger replies:

There is nothing anybody can do to make the central contradiction in *The Autobiography*—that Franklin lost and regained his faith, yet he also never lost his faith—go away. With this self-disclosed but artful contradiction, *The Autobiography* unravels and is, consequently, Franklin's conscious manipulation of his own persona. Professor Ketcham ignores this contradiction, which is not "trivial."

Franklin's political machinations were not disgraceful or anti-republican. But Franklin was not a conscientious republican—he was an egalitarian and a kind of libertarian, and any form of government that would promote these ends was just fine with him.

As regards Franklin and the three-fifths compromise, he really did come to oppose slavery and I don't doubt his sincerity in promoting the anti-slavery petition. But he didn't oppose slavery on natural-rights grounds or because he thought it was a sin against God, as the very piece Ketcham mentions ("Sidi Mehemet Ibrahim on the Slave Trade") makes clear.

I agree with almost everything Professor Lerner says in his elegant letter—especially with his comment that Franklin cared a lot about the British Empire, America, and Philadelphia. In my view, however, Franklin thought the attachments of the heart quite different from the obligations of moral duty, and believed the former to be real but the latter to make no sense. Professor Lerner seems to think that without the two together we find "closet nihilism." Franklin wouldn't agree with this. He meant it when he said that doing good to others was doing good to *oneself*—and thinking that fact through led him to his radical skepticism about morality. To the charge of selfish nihilism, Franklin would reply that the good things of life are best enjoyed when not distorted by our moral hopes, and that friendship, public service, and other common

pursuits are very good things. That said, I admit that I can't read Franklin without sensing reserve, not just of the mind but of the heart as well, in his public professions of duty.

Professor Pangle hangs me for my Franklin because the evidence I offer is only the "ubiquity of his humor" and the "adolescent essay" that denied free will. Not so. Franklin's humor is ubiquitous, and that makes it shameless, which is a real problem for anyone who thinks of Franklin as a paragon of moral virtue. But I don't derive my view of Franklin from that fact alone.

I don't offer the adolescent essay (*A Discourse on Liberty and Necessity, Pleasure and Pain*) as direct evidence, either. Rather, I refer to what *The Autobiography* says about that pamphlet as part of the evidence for the central contradiction in *The Autobiography*—a contradiction that makes "the whole story of fall and redemption, in one way or another, dubious." That's an argument for a careful reading of *The Autobiography* (and an attempt to follow the entire path of thinking), not for the sufficiency of the adolescent essay considered by itself.

Pangle needs to read what Franklin said about that essay more carefully. Franklin never says that its conclusion was "absurd." The most he says is that its doctrine (Deism) might be true (I repeat, might be *true*) but not useful, and that some error may have "insinuated itself unperceived, into my argument, so as to infect all that followed, as is common in metaphysical reasoning." All this is as tentative and provocative as could be; whether Franklin then came to believe in vice and virtue can be determined, I contend, only by a careful reading of *The Autobiography* and the other writings to which it points. I try to provide such a reading in my book, *Benjamin Franklin Unmasked*.

I agree with Pangle that Franklin became increasingly irritated at mounting British stupidity and that his satirical propaganda reflected the fact. But so little did



that propaganda reflect his moral high dudgeon that Franklin was still hoping for a job in the British government until the Hutchinson affair in 1773, just a year before he was forced to flee London. (Can anyone blame Madison for later suspecting Franklin to be a spy?)

And the matter of William is telling, but tells just the opposite of what Pangle suggests. In his *only* writing about the breach, the famous 1784 letter to William, Franklin does not blame the boy for having “betrayed his father, his country, and the just cause to advance his own fortunes.” (Pangle’s words, but where do they come from?) Franklin rather complains of William’s “taking up arms against me, in a cause, wherein my good fame, fortune and life were all at stake.” Could this be clearer? The issue was the hurt to Franklin, not to cause and country (Franklin never mentions justice).

As regards cause and country, Franklin *excuses* the boy because our opinions are subject to error and “not in our own power: they are formed and governed much by circumstances, that are often as inexplicable as they are irresistible. Your situation was such that few would have censured your remaining neuter, *though there are natural duties which precede political ones, and cannot be extinguished by them*” (emphasis added). Again, the natural duties trump political obligation and consist in what William owed to Franklin’s good fame, fortune, and life. Franklin’s tone in the letter is sad and hurt but, even so, still cooled with the usual touch of Franklin playfulness; there isn’t a hint of the bitterness or moral indignation Pangle tries hard to find.

I may have misled Mr. Slack by saying that Franklin didn’t believe in natural rights. I should rather have said that he could find no good *reason* to think that they exist. But Franklin could have agreed with Slack that it could be useful to refer to such rights, as Franklin did on a very few occasions. He once wrote that a right is “whatever a man thinks is his right.” There is no way to get from this position to natural rights with corresponding natural duties.

Franklin did indeed once call marriage “the most natural State of Man.” But he did so in *Old Mistress Apologue*, a coarse but brilliant reflection on the illusions of beauty, sex, and marriage.

A MORE PERFECT UNION

I have doubts about one assertion in Carroll William Westfall’s otherwise excellent review of Henry Hope Reed’s *The United States Capitol* (“Architecture of Liberty,” Winter 05/06). He claims that the expansion of the United States in the 19th century “required” the expansion of the Capitol from its earlier form to the building we have today.

I suspect that the legislators who approved the expansion could have squeezed themselves together more tightly, if they were so inclined; they didn’t “require” the additional space. But when Congress approved the expansion in 1850 there was another, more pressing requirement: the need to protect the Union from secessionist forces. It is my guess that the enlarged building was created as a response to that crisis.

By making a new Capitol of almost excessive grandeur, the lawmakers were proclaiming the victory of their political project, and thus silencing doubts (including their own) about the future of the republic. And when secession came and war with it, the construction of the Capitol was continued as a way of emphasizing that proclamation.

Architecture is (or was) the art of established institutions. From the earliest times, governments have responded to heightened threats by means of building. The Capitol is another instance of that old story. And it should be regarded (among other things) as a memorial to the politics of the antebellum period.

Elliott Banfield
New York, NY

BARRY GOLDWATER

Andrew Busch makes several highly debatable assumptions in his effort to enlist Barry Goldwater into the ranks of Bush-era conservatism (“The Goldwater Myth,” Winter 2005/06). He relies heavily on *The Conscience of a Conservative*, from which he draws some of his most powerful quotations, but it is questionable how much of a hand Goldwater had in its writing. Goldwater biographer Rick Perlstein claims that the senator had barely read it, and according to Busch, it was ghostwritten by L. Brent Bozell, who didn’t exactly fit into the natural-rights tradition Busch associates with the Founding Fathers, Ronald Reagan, and George W. Bush.

It is certainly true that many of the most prominent names in Reagan-era conservatism cut their political teeth on the Goldwater campaign, but it is equally true that key figures in the libertarian movement did as well. Milton Friedman, after all, was his principal economic advisor. Karl Hess, one of his primary speechwriters, would go on to become a founding member of the Libertarian Party. Incidentally, Goldwater would tell Hess in 1968, “When the histories are written, I’ll bet that the Old Right and the New Left are put down as having a lot in common and that the people in the middle will be the enemy.”

The term “libertarian” appears several times in the essay, but always as a straw man. Busch’s purpose seems to be to contrast an allegedly valueless and amoral libertarianism with the healthy natural-rights conservatism of the founders. To this end Busch quotes selectively from Darcy Olson of the Goldwater Institute, being careful to get in the “L” word, but the full quote is: “It’s its own brand. It’s very libertarian, very Founding Fathers, very traditional American principles, really.” There is nothing fundamentally unlibertarian about respect for religion and morality. If there is a difference between traditional conservatives and libertarians along these

lines, it is that the former see the promotion of these institutions as an essential function of government, while the latter view them as the products of a healthy civil society. If traditional religion and morality are so weak that they require government force to prop them up, surely they are not likely to serve as reliable pillars for the republic.

What this means is that we ought not be surprised by the disparity between the rhetoric Goldwater employed about “nature and nature’s God” and man as a spiritual being (none of which is necessarily controversial from a libertarian point of view), and the dearth of practical political proposals that he actually advanced to promote these ideas. The only ones Busch mentions are voluntary school prayer (the operative term being “voluntary”) and commitment to local control of education—and once again, I know of no libertarian opposed to either of these. One might compare these to the difference between Reagan’s rhetoric on social issues, and his lack of tangible accomplishments along those lines after eight years in office. Perhaps the question we should be asking is not whether Goldwater was a Reagan Republican, but whether Reagan was.

John Moser
Ashland University
Ashland, OH

Andrew E. Busch replies:

My argument was about both Barry Goldwater as a person and “Goldwater conservatism” as it is understood. Whatever Goldwater’s role in the writing of *The Conscience of a Conservative*, he never repudiated the book and it served as the most visible public face of “Goldwater conservatism” in the 1960s. What John Moser never acknowledges is that Goldwater’s views shifted over the years; he was not firmly pro-choice on abortion until 1983, and did not make pro-gay rights pronouncements until the early 1990s.

While I was attempting to

demonstrate that President Bush's social conservatism does not represent a radical departure from Goldwater's, this is not quite the same as trying to "enlist Barry Goldwater into the ranks of Bush-era conservatism." I actually do believe that President Bush has strayed from Goldwater's conservatism, not in the social realm but in the economic and constitutional realm. To put it another way, I think the Goldwater of 1964 would not have been uncomfortable—and the vast majority of his supporters certainly would not have been uncomfortable—hearing Bush discuss the religious roots of natural rights, call for a "culture of life," or point out the benefits of faith-based charities. I think Goldwater would have been extremely uncomfortable with the No Child Left Behind Act, the Medicare prescription drug benefit, and the president's total inattention to the rhetorical task of defending the principles of federalism and limited government. The "fusion" between economic libertarianism and social traditionalism that defined Goldwater's and Reagan's presidential candidacies is good for Republicans and, more importantly, good for the country. If Republicans have become too weighted toward social conservatism in the Bush years, it is not because he has added too much social conservatism. It is because he has subtracted too much limited government.

NEW MEDIA

Ross Douthat is too critical of Brian Anderson's *South Park Conservatives* ("The Conservative Cocoon," Winter 2005/06). Anderson doesn't argue that the conservative-friendly "new media" is some highbrow displacement of the old one, as Douthat claims he does, but that important changes have taken place in the media over the last decade and that these changes favor conservatives. In fact, the book's commercial success proves its own point: whereas in years past such a book would have been ignored by liberal-media gatekeepers, the new

media helped make it a bestseller.

Anderson's accomplishment was to carefully catalogue these changes. Fox News, for instance, was launched in 1996 with access to 17 million homes. CNN had 70 million. But these days Fox has more primetime viewers than CNN, CNN Headline News, and MSNBC combined. Apparently, there was demand.

The story of blogs is even more interesting. But Douthat sniffs at blogs as the media equivalent of those slim suckerfish that chomp parasitically on the bellies of sharks and whales. He's right that blogs don't produce original reporting, but mind the exceptions: the military blogs, for one, or the new Pajamas Media consortium.

The new media—the constellation of blogs, radio stations, publishers, and Fox News now establishing an anti-establishment—is well on its way. Rush Limbaugh is not Edmund Burke, fine, but he did manage to ruin Bill Clinton's day more than once. Sometimes that's enough.

Steven McDermott
Anchorage, AK

I read Ross Douthat's review of Brian Anderson's *South Park Conservatives* with interest, but when I see an ambitious young conservative like Douthat making condescending points for the CRB about the bestselling book of another young, successful conservative affiliated with *City Journal*—and going to the trouble of insulting the Swift Boat Veterans while he's at it—and I see in the author identification that Mr. Douthat now gets his paycheck from the *Atlantic Monthly*, it seems like an old story (which makes me wonder about Mr. Douthat's career trajectory). The way for a conservative to get ahead in the liberal media is to show that he is smarter than those other conservatives. And a surefire way to show he's smarter is to be a liberal.

Samuel Montoya
Black Hills, SD

Ross Douthat replies:

Mr. McDermott's points are all perfectly valid, but the point of my review was not to disparage blogs (I'm a blogger myself) or the new conservative media generally. Rather, I meant to suggest that for all its successes, the right-wing counter-establishment is not yet a serious threat to left-liberal cultural hegemony, that conservative triumphalism at this stage is entirely unwarranted, and that conservatives should be wary lest their media establishment take on the mainstream media's self-reinforcing qualities without ever attaining its reach and influence.

And Mr. Montoya is right that any conservative hoping to work his way up through the ranks of the dreaded MSM will come under pressure to prove his "reasonability" by attacking fellow right-wingers. I can only suggest that he read *South Park Conservatives* for himself, to determine whether I have done the (very talented) Brian Anderson a disservice in pointing out some of the weaknesses in his book's line of argument. And I hate to think that uncritically embracing a group like the Swift Boat Veterans is now a requirement for demonstrating one's conservative bona fides.

DEFENDING DALRYMPLE

Thomas Meaney's short review of Theodore Dalrymple's *Our Culture...What's Left of It* (Books in Brief, Winter 2005/06), may

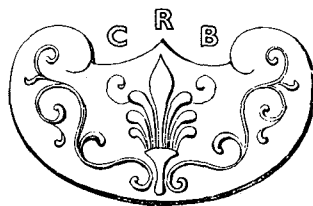
be right that Dalrymple's sharp criticisms of T.H. Lawrence and Virginia Woolf fail to appreciate those authors' "masterpieces," but from Meaney's review, no reader would come to appreciate Dalrymple's own virtues. His book includes a just and attractive appreciation of Tocqueville, Cousineau, Arnold Zweig, and Turgenev (so aptly contrasted with his contemporary, Karl Marx); a first-rate essay on Shakespeare's *Macbeth* (the best answer I know to Solzhenitsyn's claim that Shakespeare's evil ones were inferior to the lords of the gulag); and two essays on Islam that describe just how awful Islamic barbarism is and yet allow one to understand—as few other things do—the young barbarians, victims in France of state dependency and French contempt.

Readers would also not know the author's choice experiences practicing medicine around our miserable world, east and west. He has given us precious reports—for example, of a moment in a large North Korean square, where you never see any but slaves locked in unison of motion and emotion, when suddenly a lone man approaches, says he works as a government translator, whispers that he could not live without Dickens and Shakespeare, and is gone, never to be met again.

Dalrymple has witnessed the heart of our current dark ages and can trace for all to see the causal links between the falsehoods of the mandarins and the sufferings of the masses.

Michael Platt
Fredericksburg, TX

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MAN'S FIELD

Book Review by Diana Schaub

Manliness, by Harvey C. Mansfield.
Yale University Press, 304 pages, \$27.50

IN A FOOTNOTE, HARVEY MANSFIELD admits that the seminal insight of his new book, *Manliness*, came from his wife, Delba Winthrop, and her astute understanding of Aristotle. The insight is the discovery of a distinction between saying and asserting. Anyone and everyone can say things, but "asserting...is the business of manliness," since it takes courage to make a forceful claim in the face of resistance. While Mansfield generously acknowledges what he learned from the Lady and the Philosopher, he adds the audacious postscript: "but I have asserted...it."

Certainly, the assertion of the notion of assertion is an improvement on other assertions that might be made. Mansfield cites Homer's Ajax as an example of manly assertion gone awry. The honor-crazed Ajax refused to listen to his insightful and prudent wife, Tecmessa, and died regretting it. Just about the only advice that Mansfield gives to his fellow men is to "ask [women] what they think. And when they tell you, try to listen."

Mansfield listened and then asserted what he learned, which is to say he made it political. In writing this book, he has lodged a contention; he has set forth a claim to justice. (One of the things we learn about asserting is that it is, in essence, a justice-seeking action.) Why, one might wonder, do the definition and understanding of manliness need to be asserted? Why

can't manliness simply be understood? Well, for one reason because it has been misunderstood for such a long time. From an embattled position, Mansfield offers a defense of manliness.

He does not seem, however, to subscribe to the manly view that the best defense is a strong offense. His defense of manliness is not all-out, go-for-broke, throw-caution-to-the-wind. It is, as he says, a "modest" defense—a defense that does not aim to give offense, although there may be readers who take offense. But why the modesty? Is it, like a woman's modesty, a function of physical weakness? A minority view is well-advised to take a demure stance when the majority opinion is strong and not especially amenable to reason. A modest, or politic, defense may be the only hope an unpopular intellectual position has of gaining adherents and shifting the tide of battle. There is much to suggest that Mansfield's defense has something diplomatic and rhetorical, even deceptive and ironic, about it.

He indicates early on that the book's target audience is educated women, presumably because public opinion is their special preserve (though later he writes, "My book is for thinkers"). Nietzsche thought that a man should only go among women with a whip; Mansfield tries a gentler approach. Still, he can't resist delivering the occasional lashing with stinging quips. But as Mansfield himself points out,

the under-the-breath quip is a feminine mode. I suspect that he may get in as much trouble for his mocking quips as for his manly assertions. Despite that, the witty asides are one of the book's great delights.

I DON'T WANT TO LEAVE THE IMPRESSION that the modesty of Mansfield's defense of manliness is primarily a matter of presentation—an appearance of modesty that belies the reality. In truth, he expresses serious reservations about the goodness of manliness; and it is those reservations that genuinely moderate his defense. Despite the contemporary censorship of the word "manliness," Mansfield finds plenty of the thing itself among us—too much in fact. What has happened is that manliness has been refashioned, through gender-neutral language, into "autonomy," "independence," and "transcendence."

In the past, manliness was characteristic of men, and not all men, but only a portion of them: the manly men. Manly men ruled, but they did not rule absolutely; they were kept in check by the unmanly, particularly by women and philosophers. Mothers, wives, sisters, and daughters let their sons, husbands, brothers, and fathers know when the courage and protective manliness on which women depended had crossed the line into rashness or tyranny or male bull-headed idiocy. Whereas a woman



spoke (or, more accurately, complained) only to the men in her domestic circle, the philosophers (being men themselves) abstracted from the personalism of women and generalized the critique. Socrates and Plato challenged Homer and the Homeric heroes; Aristotle sought to tame the militaristic manliness of the Greeks by pointing out that war should be pursued for the sake of peace. Both women and philosophers have traditionally been critics of manliness, but appreciative critics; they have been, like Mansfield, modest defenders of manliness.

IT MAY BE THAT A ROSE BY ANY OTHER name would smell as sweet, but it turns out that in the case of manliness, the name matters. According to the genealogy that Mansfield traces, when manliness assumed its various gender-neutral aliases (autonomy, for instance), it became noxious. In being separated from males and universalized, manliness escaped its natural or God-given limits. The heart of the book traces how manly assertion was transformed into manly nihilism (via Darwin and Nietzsche) and in turn how manly nihilism was embraced by the woman warrior, Simone de Beauvoir, who refashioned it into the womanly nihilism of radical feminism. Like Athena sprung fully armed from the brow of Zeus, Beauvoir's feminism is the motherless and mother-hating offspring of Nietzsche's hypertrophic philosophic manliness.

Nihilism denies a human essence and denies as well the political and moral significance of the bifurcation of that human essence into male and female natures. When there is no sense of one's own being nor of a higher being or end for assertion to serve, then assertion itself becomes the be-all and end-all of human existence. Assertion runs riot. Manliness loses its protective, responsible, patriarchal side. It becomes virulent rather than virtuous. Mansfield shows the dark side of the force at work not only in fascism, but closer to home in feminism and modern science. It turns out Rush Limbaugh was not too far off when he coined the expression "femi-nazis." Mansfield's brilliant analysis of the scientific approach, especially the political and moral consequences of the doctrine of evolution, helps one understand how those with such a reductionist view of mankind can think so highly of themselves and so hubristically of their enterprise. If it is true that "the more science diminishes man, the more it encourages manliness," then that is a recipe for scientific tyranny. There is no end in sight to the imperialistic project to engineer and improve the human mechanism in accord with a scientific, soulless view of desirable functioning.

Mansfield's modest defense of manliness is, in truth, a profound critique of manliness—a cri-

tique that used to be readily available from both women and philosophers, until they converted to manliness themselves. Mansfield's exploration of the paradoxes and perversities in both scientific and feminist nihilism is inexpressibly rich. So too are his wonderful interpretations of the novelists, poets, and playwrights who help us think more clearly about manliness, from Homer to Hemingway, from Aristophanes to Oscar Wilde, from William James to Henry James. The superiority of Mansfield's method is confirmed by the insights it yields. Unlike the



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psychologists and neurologists who study men in bits and pieces, Mansfield seeks to assemble and assess male nature as a coherent whole.

Academic studies of sex differences, for example, have documented certain traits more pronounced in men, like aggression and spatial reasoning, but no researcher has ever bothered to ask "how is spatial ability in men related to their aggression?" Mansfield not only asks the question, he answers it, with a concise account of the deep link between aggression and abstraction. Mansfield, however, quickly transcends the realm of generic masculinity. His chosen poets are better guides than the social scientists to the

higher and more exclusive levels of manliness, where the phenomenon is both more admirable and more dangerous. Literature teaches us about the few really manly men who assert themselves against nature and authority. It teaches us about the civilized manliness of the gentleman, and even how such manliness might comport itself in the face of nihilism. The very highest reach of manliness is visible in the courageously free-thinking philosopher. While Plato and Aristotle might criticize manliness (and early modern philosophers like Hobbes go further and try to suppress it), Mansfield suggests it is no accident that philosophers are always (or almost always) men.

By the time his tour is complete, Mansfield has made the case for a manliness properly circumscribed by morality. This means a manliness subordinated to the welfare of the weaker sex (with ungentlemanly frankness, he insists on women's weakness) and to the well-being of weaker and more vulnerable human beings in general. It turns out that the proper employment or deployment of manliness depends greatly on how that weaker sex behaves. He agrees with Tocqueville that women establish the moral horizon and that they do so through their privileged position in the domestic sphere. Nonetheless, Mansfield does not endorse a return to the traditional separate-but-equal arrangement. In fact, he dismisses as reactionary the division of labor based on sexual complementarity (in which men and women, equally valued, are understood to have different natures, different virtues, and different responsibilities). Following John Stuart Mill, the contemporary world now understands sexual equality in the economic and individualistic terms of equal access to education and the professions. Mansfield does not call for any curtailment of this. He does, however, envision some redrawing of the public/private distinction in American life. In public and under the law, we should continue to insist on gender neutrality, but in private there should be a more honest acknowledgment of gender differences, and yes, even the truth of sex stereotypes. In sum: let us follow John Stuart Mill in public and Aristotle in private.

I'M CHARMED BUT NOT ALTOGETHER PERSUADED by this conclusion; or maybe I'm so persuaded that I don't see why the triumph of Aristotle in private would not eventually undermine our official stance of gender neutrality. When Mansfield dismisses the reactionary solution, he considers how Tocqueville sought to preempt feminism by lavishing praise on American women. Tocqueville extolled American women's "superiority," by which he seemed to mean their manly courage in accepting their domestic lot. Mansfield

responds: "Praise for their courage in settling for domesticity will not convince them to do it when they are not compelled." True enough, women are no longer compelled to remain at home (if anything they are compelled into the work force); and true enough, women could not be brought back to the home by presenting it as the manly thing to do—a noble self-sacrifice. But what if it does not take courage to settle for domesticity; what if women just prefer domesticity; what if domesticity is not something a woman settles for, but something she settles into; and what if settling is not a sacrifice but a comfort? It seems to me that both Tocqueville and Mansfield temporarily forget woman's different outlook, the different constitution of her soul's desire.

ALTHOUGH MANSFIELD SUGGESTS THAT we at least pay lip service to Mill's androgynous version of sexual equality, he indicates that Mill's triumph may not be due to the merits of his argument but rather to the fact that "modern progress has not left much for women to do at home." Mansfield does say that "a determined woman might live wholly absorbed in the tasks set down for her in Cheryl Mendelson's *Home Comforts*" (a how-to book for the cleanliness-minded professional housewife). Here and elsewhere in the book, he seems to echo the feminist demotion of women's work to housework, and the consequent undervaluing of it. Modern progress might have made laundry easier to do, but it has not made childrearing any easier, and it has made it more than ever likely that women, in addition to caring for children, will spend many years caring for elderly parents. Moreover, discontent with "modern progress" has induced many women to take over completely the task of schooling their children. Home-schooling is becoming more than a fringe phenomenon. It is also still women who perform most of the volunteer and charity work. Particularly in those segments of American society where women's work is conceived in its fullness, the reactionary arrangement will remain the choice of a substantial and, I suspect, increasing minority.

A recent survey of female undergraduates at Yale revealed that 60% of them hoped to be stay-at-home moms (or, as the devotees of Dr. Laura define the job, "I am my children's mom"). The recent rash of Nanny shows (*Nanny 911* and *Supernanny*) reveals that the traditional arrangement is still fairly common and still the aspiration of many couples, but also that stay-at-home mothers, raised doubtless by 1970s feminists, no longer have a clue how to raise their kids. In these shows, a proper British nanny arrives at the household to instruct the parents in discipline and hierarchy.

If we are serious in admitting, in private, the truth of gender differences, won't that force public acknowledgment as well? Take an issue like sexual predation and rape at the nation's military academies. A real solution would start from an acknowledgment of women's physical vulnerability, and would recommend, not more karate training, but the cultivation of female modesty and male gentlemanliness. But that solution flies in the face of gender-neutrality. How can an officer be a gentleman when he is trained to be impervious to the cries of a wounded or captured female soldier? Gender neutrality requires the neutralization of his tenderness towards women. If a man is taught to ignore the screams of a tortured woman, why should he pay much heed to other violations of her bodily integrity, even ones for which he is responsible? The co-ed military is of course the toughest test of gender neutrality (as Plato's *Republic* illustrates), but the situation there is just a more extreme version of the co-ed university or the co-ed corporation.

Mansfield admits that greater private truthfulness about men and women would spill over into society. How far would it wash into policy? Since the original liberal distinction between state and society doesn't erect a wall of separation, wouldn't a return to the free recognition of gender differences in society bring about changes in public policy and law as well—perhaps changes allowing for discrimination on grounds of sex?

Mansfield is certainly right that "we need to both respect and ignore sex differences," but it is hard to envision precisely how liberalism is going to accommodate manliness, and, I think, even harder to envision what the analogue for women will be. The final lines of Mansfield's book show the difficulty. He says "men should be expected...to be manly" and women, while free to pursue a career, "should also be expected to be women." Note that the formulations are not parallel. What does it mean for women to be women? Should they be "womanly" as in "feminine," or should they be like Margaret Thatcher, "the mightiest woman of our time" and a paragon of manliness? Women, as Mansfield notes, "want it all," and he calls for a new and better feminism that would understand womanhood, and its contradictory desires, better than the old feminism. Nonetheless, he leaves that task to others, perhaps women who read his book and fashion a model more suitable than either Simone de Beauvoir ("Nietzsche in drag") or Rousseau's Sophie.

Although women and philosophers used to put manliness in its proper place, neither group is at present performing its crucial unmanly

role. It might be worth exploring whether there are other avenues (political or theological) by which manliness could be moderated. At least in our regime, I believe there are.

Mansfield presents manliness as fundamentally aristocratic. The manly individual asserts himself and his significance in the cosmos. According to Mansfield, the case for human significance cannot be made in general; it must be made by particular individuals, usually men, who assert human meaning through such deeds as the founding of political communities. Founding is not, as Nietzsche would have it, a nihilistic assertion in the void, but rather an assertion in accord with, though not determined by, our nature as political beings. In founding and other chosen acts of manly assertion, nature and nurture (or nature and convention) are fused together. Moreover, this fusion is accomplished in particular and highly partisan ways. The superior man asserts his own superiority and the superiority of his way of life. Thus, the Greek poets who celebrated Greek manliness held that "it is fitting that Greeks rule barbarians."

Following Aristotle, Mansfield concludes that manliness is at heart tyrannical or imperialistic: "manly men in taking responsibility for others cannot stop themselves from ruling their inferiors and from treating them as slaves. Their very goodness, when it is responsible, compels them to compel others so as to make them good too." Of course, Aristotle tries to administer a check to these responsibility-hogging tyrants by arguing for the superiority of the contemplative life over the active life, but we know that the powerful don't listen to the wise any more readily than to women.

I WONDER WHETHER THE AMERICAN FOUNDING and its doctrine of the equality of rights-bearing individuals—the endowment of nature and nature's God—does not contain a remedy for the tyranny implicit in manliness, at the same time that it calls forth the manliness required for human flourishing. The Declaration of Independence demands manly virtue, because it is left to human beings to vindicate and secure the rights that belong to us (rather precariously it seems) by nature. But the Declaration of Independence restrains manliness too, since those human beings who hazard their lives, fortunes, and sacred honor act not for themselves alone, but for all and in the name of all. Moreover, by their success they acquire no title to rule that goes beyond self-rule or the limits of republican self-government.

The American Founding aims for a new kind of impartiality in politics. Yes, we separated ourselves from the mother country and set ourselves apart, but the ground on which we did so was not an assertion of our superiority

(as in "it is fitting that Greeks rule barbarians"), but an assertion of an equality shared by all mankind. The American regime is better than those regimes not founded upon the consent of the governed, but our goodness does not compel us to compel others to similar goodness. In fact, the way we understand the goodness of our regime (the doctrine of human equality that underlies the need for consent) sets internal limits to virtue's imperialism.

When I tried to fit Washington and Lincoln (or Churchill) within the ancient account of manly virtue (with its inherent tyranny) I couldn't quite do it. Washington, Lincoln, and Churchill are not like Pericles, Alcibi-

ades, and Caesar. George Washington, the father of his country, who could have ruled for life, relinquished command of the victorious army and resigned from the presidency in deference to republicanism. Abraham Lincoln saved the Union and inaugurated a new birth of freedom by bringing his fellow citizens back to the creedal truth of human equality and the political meaning of that truth ("in giving freedom to the slave, we assure freedom to the free"). Churchill, after rescuing the West from the peril brought about by democratic softness on the one side and nihilistic hardness on the other, dutifully left office when he was unceremoniously voted out. Does the phenomenon

of modern democratic statesmanship show the possibility of a self-restrained, non-tyrannical manliness? Perhaps our best bet for a revival of moderate manliness is the re-assertion of the truths of the Declaration. If we once again asserted those truths to be self-evident, we might find both manly wherewithal and a standard by which to keep manliness moderate and moral. We will certainly need both manliness and morality if we hope to meet the looming threats of our own era, whether Islamist terrorism or imperialistic science.

Diana Schaub is chairman of the department of political science at Loyola College in Maryland.



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HOW TO ELIMINATE IRAN'S NUCLEAR WEAPONS:

A SYMPOSIUM



IN AUGUST 2002, AN EXILED IRANIAN OPPOSITION group produced evidence that the Islamic Republic of Iran had managed, for the previous 17 years, to conceal from the world a nuclear weapons project. In June 2003, the International Atomic Energy Agency (IAEA) verified the group's claims, declaring Iran in violation of its commitments to the Nuclear Non-Proliferation Treaty. That September, the U.S. called for Iran's referral to the U.N. Security Council. But in the event, the Bush Administration agreed to defer to a coalition comprising the United Kingdom, France, and Germany (the "E.U.-3"), which sought through a variety of political, economic, and technological concessions to persuade Iran to abandon its nuclear program.

In December 2003, Iran confessed to the IAEA its years of clandestine nuclear experiments, claiming that they were designed for peaceful civilian purposes. That month, Iran signed an agreement with the foreign ministers of the E.U.-3 to suspend the country's uranium enrichment—but in June 2004 was caught by the IAEA in violation. E.U.-Iran talks resumed in November 2004, leading to an agreement in which Iran promised, once more, to suspend its program. But Iran reneged and threatened to withdraw from the negotiations unless various concessions were made—which Iran won.

In June 2005, Mahmoud Ahmadinejad, a former commander in Iran's Revolutionary Guard, was elected president. "The wave of the Islamic revolution will soon reach the entire world," he declared, and in September 2005, indicated that Iran was willing to transfer nuclear technology to other Islamic nations. The next month, Ahmadinejad declared that Israel must be "wiped off the map," a slogan subsequently seen adorning Iranian missiles during parades.

In January 2006, defying Western warnings, Iran broke the U.N. seals at its Natanz uranium enrichment plant. The E.U.-3 suspended negotiations and recommended that the matter be referred to the Security Council. On February 17, French Foreign Minister Philippe Douste-Blazy declared, "No civilian nuclear program can explain the Iranian nuclear program. It is a clandestine military nuclear program." The same day, Ayatollah Ahmad Jannati, the head of Iran's ruling Guardian Council, warned: "Nuclear technology is our red line and we will never abandon our legitimate right to this technology. They are trying to terrify us with a scarecrow called the Security Council. We are not scared.... They will be harmed more than Iran if they act unwisely."

ON MARCH 7, SHORTLY BEFORE THIS issue went to press, Vice President Dick Cheney told an audience, "The Iranian regime needs to know that if it stays on its present course, the international community is prepared to impose meaningful consequences. For our part, the United States is keeping all options on the table in addressing the irresponsible conduct of the regime.... We will not allow Iran to have a nuclear weapon." The next day, in Vienna, the IAEA concluded that after nearly three years of inconclusive inspections, it would finally refer the matter to the Security Council—30 months after America's initial call to do so. In response, Ali Asghar Soltanieh, Iran's envoy to the IAEA, said: "The United States has the power to cause harm and pain, but the United States is also susceptible to harm and pain. So if that is the path that the U.S. wishes to choose, let the ball roll out." (Iran also threatened to curtail oil production.) On March 9, before a Senate committee, Secretary of State Condoleezza Rice said of Iran, "We may face no greater challenge from a single country."

The *Claremont Review of Books* asked seven leading thinkers to reflect on our political and military options in eliminating Iran's nuclear capability.



Ilan Berman

THERE IS AN EMERGING GLOBAL CONSENSUS that Iran's nuclear ambitions represent a grave, growing threat to international peace and security. Yet the degree to which Iran's atomic advances also challenge American objectives in the greater Middle East is less well appreciated. A nuclear Iran can be expected to alter profoundly the United States's strategic calculations in the War on Terror. The U.S. should soon expect to confront six dangerous regional developments.

The first is growing Iranian influence, as countries in the region attempt to establish some sort of *modus vivendi* with a nuclear (or nearly nuclear) Iran. More likely than not, this trend will include a drift away from cooperation with the West, making the already problematic Persian Gulf increasingly inhospitable for U.S. and coalition forces.

The second is a new arms race, as certain states ramp up their own strategic programs in an effort to counterbalance the Iranian bomb. Already, both Saudi Arabia and Egypt have begun to exhibit telltale signs of such efforts, and other countries, e.g., Iraq and Turkey, could soon follow suit.

The third is expanded proliferation, as Iran's nuclear know-how becomes an export commodity. Iran is already a major "secondary proliferator" of weapons of mass destruction (WMD), and worse is still to come because its radical new president, Mahmoud Ahmadinejad, has publicly signaled his willingness to provide nuclear assistance to other Muslim states.

The fourth is increased terrorism, as an emboldened Tehran expands its use of radical groups as a strategic tool against Western interests abroad. Just as importantly, a nuclear Iran is bound to enjoy greater freedom to export its Islamist revolutionary principles.

The fifth is strategic blackmail, as Iran exploits its strategic location in the Persian Gulf to threaten the safety of American forces operating in the region, as well as the security of global energy supplies.

The sixth, and arguably the most important, trend will be greater longevity for Tehran's ruling regime. A nuclear capability will provide the Iranian government much greater latitude in suppressing, without fear of international consequences, the widespread dissent now visible on the Iranian "street." The likely outcome? A death knell for Iranian democracy and a new lease on life for the Islamic Republic.

There is no shortage of policy options available to the U.S., but the utility of each depends

on an accurate understanding of Tehran's ideology. Twenty-six years after its founding, the Islamic Republic of Iran remains a revolutionary state. In fact, thanks to the rise of a new cadre of regime hard-liners, the Ayatollah Khomeini's vision for Islamic revolution at home and abroad has greater resonance in Tehran today than at any time since his death in 1989. Not surprisingly, the radicals have learned to love the bomb, seeing it as the key to regime stability—and to preempting "preemption" by the U.S.

Diplomacy, therefore, may delay and complicate Iran's quest but cannot alter it. Tehran has made a clear strategic choice in favor of possessing nuclear weapons by any means necessary. Economic sanctions will be problematic. Thanks to its oil and natural gas wealth and its emerging energy alliances with customers such as China, Kazakhstan, and India, Iran is far less vulnerable to fiscal pressure today than it was in the past.

Containment is possible but difficult. At a minimum, a new containment regime will need to reinforce Iran's vulnerable regional neighbors, roll back Tehran's military advances, and curb Iranian access to critical WMD technologies. And if the U.S. contents itself with containment alone, it will send a clear message that it accepts a nuclear Iran—a message that will weaken our regional alliances.

Nor is deterrence alone a viable solution. Iran is not monolithic; some segments of the Iranian government are rational and capable of being deterred. But others, including the country's new president and his coterie, share an apocalyptic religious worldview that demands a crisis with the West.

Finally, preemptive military action against Iran, either by the U.S. or its allies, should be strictly a last resort. For while technically possible, preemption may prove in the long run to be counterproductive. The Iranian people and government have little in common, but they agree (although for vastly different reasons) that nuclear weapons are a top national priority. Any external action to take away that capability is likely to cause ordinary Iranians to rally round the flag, substantially prolonging the current regime's life.

Accordingly, the U.S.'s goal should not be simply to contain and deter a nuclear Iran. It should be to create the necessary conditions for a fundamental political change within that country.

Ilan Berman is Vice President for Policy at the American Foreign Policy Council in Washington and the author of Tehran Rising: Iran's Challenge to the United States (Rowman & Littlefield). This article is adapted from Mr. Berman's February 1st testimony before the Committee on Armed Services of the U.S. House of Representatives.



Patrick Clawson

TOO MUCH OF THE DISCUSSION OVER Iran's nuclear program is concentrated on the extreme responses: either attack or appease. There is a wide range of intermediate policy options that hold much more promise.

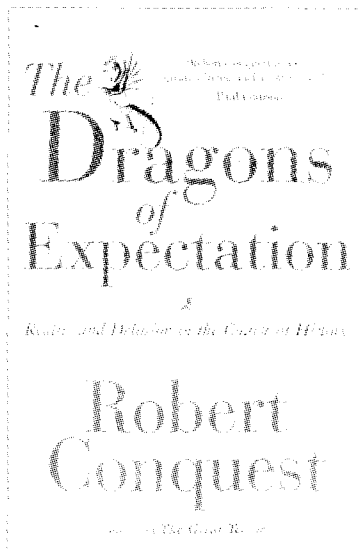
To influence Iran, the U.S. needs instruments of persuasion and dissuasion. Most of the former proposed by Europe have been economic agreements that smell like disguised bribes. Since Iran is flush with oil income (its foreign exchange reserves total over \$30 billion) it has dismissed these offers. A better approach is to concentrate on security measures in order to redress the argument that Iran needs nuclear weapons because it has real security needs. There are many confidence- and security-building measures (CSBMs) and arms-control measures that would be advantageous for both Iran and the West. Examples of CSBMs would be an exchange of observers for military exercises in and near Iran, or an incidents-at-sea agreement to prevent unintended naval confrontations. Besides the impact they might have on Iran, offers of CSBMs could impress Europe and Russia with America's reasonableness.

As for instruments of dissuasion, economic sanctions, if imposed while oil markets are so tight, would be ineffective and inflict too much damage on Western economies. Much more useful would be measures to emphasize Iran's isolation over the nuclear issue. In several cases recently, the United Nations Security Council has imposed targeted sanctions, such as banning travel by key individuals, to drive home the high political price of unacceptable actions. In both Serbia and South Africa, the sanction felt most keenly by the public was the ban on international sporting competition. If young Iranians learn that their country's participation in the June 2006 soccer World Cup is dependent on resolving the nuclear issue, there will be a dramatic increase in their interest in the negotiations.

Deterrence and containment measures, similar to those of the Cold War, would show Iran that its security will be hurt if it continues with its nuclear program. And they would put the West in a better position to use military force if the need arose. One step in this direction would be to sell Arab states in the Persian Gulf more advanced anti-missile and air defense systems. Raising doubts in the minds of Iranian decision-makers about the country's ability to reliably deliver its nuclear weapons could make their use prohibitively risky in all but the direst

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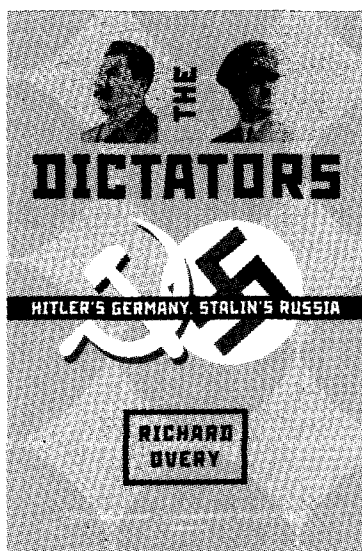


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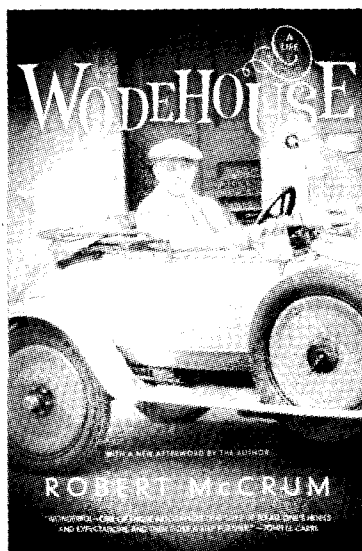


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circumstances. In addition, Iranian leaders regularly threaten to disrupt shipping in the Strait of Hormuz. An exercise to protect the Strait with minesweepers and so on, if conducted in the near future, would signal Iran that the West is willing to use force to protect its vital interests in the Gulf, yet without suggesting that the West is preparing to attack Iran itself.

But all such measures to press Iran and to deter it are stalling tactics. So long as the country is an Islamic Republic, it will have a nuclear weapons program, at least clandestinely. The key issue, therefore, is: how long will the present Iranian regime last? It is clear that the Iranian people detest the present system. America has an important interest, both strategic and moral, in supporting Iran's pro-democratic forces. It would be a grave setback to Washington's democratizing agenda in the region if the U.S. were perceived as selling out Iran's beleaguered reformers by concluding a deal with the autocrats. Besides, the reigning mullahs would almost certainly cheat on any deal, as they did during the Iran-Contra affair when they released some hostages only to take others. The only sure route is the best moral route: supporting Iranian democrats with such modest aid from Washington as more television and radio broadcasts.

Patrick Clawson is the deputy director of the Washington Institute for Near East Policy. His most recent book (with Michael Rubin) is *Eternal Iran: Continuity and Chaos* (Palgrave Books).



Angelo M. Codevilla

SOON IRAN WILL HAVE NUCLEAR WEAPONS. You and I wish it were not so. But making those nukes go away will take forceful, costly acts of war that would surely disrupt, and likely endanger, our own lives. But you don't want to disrupt your life, to set in motion lethal events the end of which you cannot foresee? Then make the best plans you can for living with nuclear weapons in the hands of our Iranian enemies—and the other enemies who, with Iran's help, will likely follow its example.

You say it is unacceptable to choose between such alternatives. There must be a moderate, middle way to oppose Iranian nukes. What about diplomacy? sanctions? confidence- and security-building measures? The short answer is no. You are simply postponing the real choices, and effectively choosing something worse than either.

Diplomacy conveys reality: either you are willing to force the other party to act against its will, or you are not. European diplomacy, to which the Bush Administration has conjoined America, conveys the reality that no one is willing to overpower the Iranian government. The ultimate "stick" of this diplomacy, referral to the U.N. Security Council, is really the prospect of more talk. That is because Russia is playing *vis-à-vis* the Iranian nuclear program roughly the same game that China plays with respect to North Korea's—gaining leverage against America. In Washington as in Paris, there is hardly appetite for anything but kicking the diplomatic can farther down the road. Hence the end of such diplomacy can only be diplomacy without end—an ever more ruinous advertisement of our own fecklessness.

Faith in so called confidence-building measures is based mostly on the dubious proposition that benign procedures can override malign intentions—the same faith that has tranquilized the losing parties in the modern world's "peace processes." The other basis for that faith is that time itself will make the problem go away.

But what about sanctions? Can't the Security Council impose them? Sure. In fact, any sovereign nation can impose any restriction it wants on its dealings with others. The real question is: how serious, how coercive would sanctions be? Between 1990 and 2003, the U.N. sanctions on Iraq taught the age-old lesson that economic strictures are blunt instruments. Because economic goods are fungible, partial sanctions—exempting food and medicine, as with Iraq, or oil, as with Italy in 1935—simply raise the overall price level. They also offer opportunities for manipulation and corruption that strengthen authoritarian governments. Just like endless diplomacy, they convey the un-coercive message: we are doing inconclusive things because we dare not do conclusive ones.

Are there not economic sanctions as coercive as war? Yes, indeed! Total economic sanctions can be deadlier than atom bombs. Were Europe and America to impose a total trade embargo on Iran—and enforce it by including any third party that trades with Iran—the Iranians would quickly be forced to choose between nukes and starvation. But this embargo would be war, not just against Iran but potentially against Russia and any other country forced to choose sides. Such a war is surely as winnable as it would be costly.

Isn't covert action an option between doing nothing and sending the Marines? Beware of the illusion that big results can come on the cheap. Sure, many Iranians are ready, willing, and able to begin a coup against the current re-

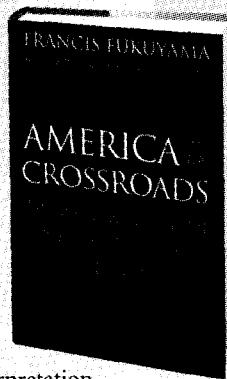
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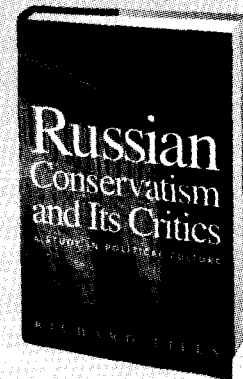
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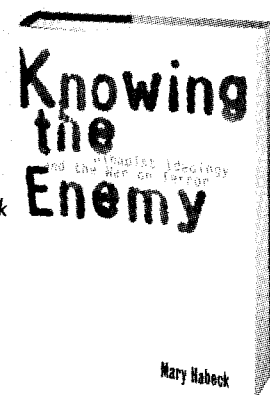
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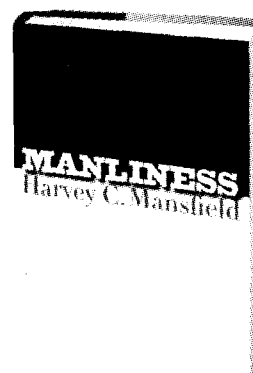
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gime. But could they finish it, alive? We could encourage them to try. But neither covertly nor overtly is it possible for small numbers of foreigners to tip the political scales in a country of 70 million. To ensure that an internal struggle turned out right, we would have to enter a civil war promptly and massively.

Nor should we doubt that "surgical strikes" on Iran's nuclear sites would constitute war itself. It would be a foolish war, because its premise would be that the nuclear technology is our enemy. Nonsense. Our enemies are not things, but specific people. If we are to shoot, let us not do so as in Iraq, against no one in particular while trying to remake the entire country according to abstract principles. Rather, let us make war against a regime, knowing that this will empower its opponents. Though costly, a real war would yield the desired results.

The alternative of peace with a nuclear armed Iran should not be discounted. Cheerful acceptance of Iran's nuclear armament would obviate war's pains and hazards. It offers possible advantages, too. First, in a relaxed international atmosphere, the ongoing struggles within Iran may change the regime all by themselves. Then we might not have to fear its armaments. Second, absent Western pressures, Iran would be less tempted by a relationship with Russia that benefits only the latter. Since Iran's long-term interests are with the West, the more relationships its people have with us the more constrained the government will be in the use of its weapons. Friendly relations with Iran would reduce its incentives for exhibiting our impotence by threatening us with high oil prices. Of course, these advantages might not be realized, at least not soon.

Third, abandoning the illusion that cheap talk, pro forma procedures, and token sanctions can exorcise Iran's nuclear force would inject seriousness into the rest of American foreign and defense policy. The current make-believe approach to U.S. missile defense, as well as the dysfunctional abstraction called "war on terrorism," would have to be replaced with something like the 1950s' "containment." A serious combination of accommodation and defense is not a strategy for victory. Nonetheless, it beats talking offensively while acting impotently.

The point here is that while war against Iran and cheerful acceptance of its nuclear ambitions each implies mixtures of costs and benefits, the hybrid course we have been following and are likely to pursue (albeit with cosmetic variations) is pregnant with all the disadvantages of war as well as of peace, while lacking the advantages of either. Hectoring Iran and perhaps inconveniencing its people while doing nothing

decisive amounts to what Theodore Roosevelt used to call "peace with insult"—the worst of practices—and is reminiscent of U.S. policy toward Japan in the 1930s.

Making sure that means and ends match one another, meaning that the actions we take actually produce the ends we profess, has ever been the essence of prudence. Machiavelli taught that enemies are to be caressed or extinguished. But it seems that our ruling geniuses read lesser textbooks.

Angelo M. Codevilla is professor of international relations at Boston University, a senior fellow of the Claremont Institute, and the author most recently of No Victory, No Peace (Rowman & Littlefield).



Efraim Halevy

FOR MORE THAN A DECADE AND A HALF, Iran has confronted the free Western world with a combination of challenges: state terror perpetrated on foreign soil, ranging from Buenos Aires to Paris and London; the arming and maintenance of paramilitary forces in foreign countries, e.g., Hezbollah in southern Lebanon, which confronts the Israel Defense Forces along Israel's northern border; the promotion of Muslim activism in parts of former Yugoslavia; and not least, its decades-long determination to obtain or develop a nuclear weapons capability. It has openly championed the destruction of Israel, and has repeatedly defied the United States from the day it stormed the Embassy in Tehran in 1979. Over 50 hostages were held for 444 days before they were liberated in a deal that released \$8 billion in frozen Iranian assets and gave Iran immunity from any legal action. In Beirut on October 23, 1983, an Iranian-sponsored terrorist attack claimed the lives of 241 Americans, mostly Marines. Iran paid no price for these acts, and in Tehran's eyes they were both outstanding successes.

Iran's political system is, by Middle Eastern standards, relatively democratic; its extremist President Ahmadinejad was elected to his post by a free popular vote. Thus the Bush Doctrine of introducing democracy into the region is not applicable to the Iranian dilemma.

The free world's policy *vis-à-vis* Tehran over the past 17 years has been ineffective. Underterred by President George W. Bush's declaring it a member of his axis of evil, Iran has pursued its policies with determination and impunity.

It has assumed that it could get away with all that it has done and has been proved right. It has been consistently devious and unreliable in honoring its international commitments. These must be our points of departure.

In looking to the future, due weight must be given to the limitations that American commitments in Iraq, Afghanistan, and elsewhere are placing on its capacities and freedom of action. An Iraq-type solution to the Iranian issue cannot be contemplated at present without the renewal of the draft; this does not appear imminent. Surgical operations might have limited and important effects, but could also go wrong; consider the fate of the 1979 hostage rescue effort.

In these circumstances, the following measures should be contemplated: First, a major effort should be mounted to develop and produce defenses against Iranian offensive missile and air capabilities; anti-ballistic missile and anti-aircraft systems must be given the highest priority in order to protect the air and outer space of nations under threat. Other means of warfare must be researched and developed to counter Iranian capabilities. Much has been and can still be done in this direction.

Second, the Iranian threat must be treated and viewed in its entirety and Iranian vulnerabilities must be sought and found. A possible candidate for such an approach is the Hezbollah movement in Lebanon, which faces a complex situation after Syria's partial withdrawal from Beirut. A blow to Hezbollah through military or diplomatic means could severely damage Iranian prestige in the region and reverberate in Tehran. There are other vulnerabilities that should be exploited to the full.

Third, a concerted campaign, partly overt and partly covert, should be initiated to encourage the silent, moderate majority in Iran to begin rising against the Ayatollahs. Secretary of State Condoleezza Rice's recent request that Congress approve a \$75 million budget to encourage democracy in Iran is a major first step in this direction; an element, one hopes, in an overall strategy designed to promote regime change in Iran. A full-blown propaganda campaign should be mounted and sustained over a long period. The best brainpower available must be recruited for this formidable mission.

Fourth, the present diplomatic efforts at the U.N. Security Council must be pursued to their conclusion. If it proves impossible to sanction Iran, perhaps due to Russian or Chinese objection, unilateral action to damage Iranian economic and business interests should be contemplated. Whether or not sanctions are ultimately imposed, groups of

countries led by the U.S. can decide to boycott any international gathering attended by Iran and thus begin a campaign to isolate Tehran and diminish its prestige in the Middle East and throughout the world.

Fifth, the nature of the Iranian threat in all its dimensions is such that only a regime change can provide a genuine solution to the problem. In order to achieve this, "command structures" must be constituted to oversee and conduct the combined effort against present-day Iran. Such structures must enjoy the support of the "political masters" in Washington and elsewhere, and must deal with the entire gamut of issues pertaining to Tehran. The struggle must be waged simultaneously and in a coordinated manner on all fronts.

Finally, thought must be given to the possibility that all measures will fail and Iran will succeed in obtaining nuclear capabilities. Should this happen, the leaders in Tehran must be given to understand, loud and clear, that were they to use their weaponry, the price could well be the complete destruction of their country and nation. Nothing less than such a credible and terrible threat will deter them.

Efraim Halevy directed the Mossad, Israel's foreign intelligence service, from 1998 to 2002 and served as national security advisor to Prime Minister Ariel Sharon in 2002-2003. He now heads the Center for Strategic and Policy Studies at the Hebrew University of Jerusalem, and is the author of Man in the Shadows: Inside the Middle East Crisis with a Man who Led the Mossad (St. Martin's Press).



Victor Davis Hanson

"BAD AND WORSE" IS NOW THE CONVENTIONAL wisdom regarding our choices in dealing with Iranian President Mahmoud Ahmadinejad's efforts to obtain the bomb. We are told that Western air strikes will lead to violent reactions in the Islamic world; increase terrorism; empower the Iraqi Shiite obstructionists; destroy the much ballyhooed but little heard from Iranian opposition; and that even after days of bombing, we will be unable to level all Iran's nuclear facilities. That's the "bad" option we face.

Apparently no one believes that stopping the Iranian bomb would humiliate the mullahs and teach others in the region not to try something similar—even though Libya gave up its WMD arsenal, by its own admission,

only because Muammar al-Qadhafi feared the fate of Saddam Hussein.

"Worse" means they get the bomb—which results in a nuclear Iran threatening Israel, U.S. troops in the Middle East, neighboring Arab oil exporters, and European capitals, even as Western liberals bicker over whether Ahmadinejad seeks merely status, high oil prices, greater power over a restless populace—or paradise as his reward for destroying the Jewish state. This is a leader who listens to voices in a well, dreams about the missing 12th imam, claims his audiences can't blink while he talks, and may have been one of the terrorists who stormed the U.S. embassy in 1979—adding messianic nihilism to the tinderbox of petrodollars, nukes, and terrorism.

In response, Zen-like, the United States keeps silent in the background. The Europeans' vaunted multicultural dialogue goes nowhere, earning them Iranian contempt rather than gratitude. The United Nations is, well, the United Nations, and more likely to obsess over Israel's half-century-old arsenal than worry about a new nuclear theocracy. The Arab autocracies, meanwhile, don't seem too worried about a Persian-Israeli conflagration that might cripple both traditional enemies, if it transpired without raining too much fallout on the West Bank.

China and Russia want either Iranian oil or petrodollars, and seem to enjoy the West's anxiety, confident that in the worst-case scenario a nuclear Iran would probably point its missiles and terrorists at someone else. Russia promises oversight of Iranian enrichment, a fox-in-the-henhouse scenario since it sold the mullahs most of the requisite nuclear technology in the first place. The Israelis are stymied, at least temporarily. The fear of a second Holocaust will make them act at the eleventh hour, though they know that most of the world would sigh in relief—and damn them in the morning papers.

Stung over the perception that senior Democrats can't be trusted with national security, Senators John Kerry and Hillary Clinton deplore the "outsourcing" of American responsibility in dealing with Iran—though of course they would be the first to condemn Bush cowboyism, once CNN got going with its live feed of collateral damage on about, oh, day 3 of any air campaign.

Former President Bill Clinton last year apologized to the Iranian mullocracy for American support for the Shah 30 years ago and CIA espionage a half century past, but not to the American people for allowing Pakistan, Iran, and North Korea to begin in earnest their nuclear acquisition programs on his

watch. Jimmy Carter should turn up soon, calling for sensitive understanding of Iran's unique security needs; indeed, the closer Iran gets to the bomb, the more the Left will say that we can live with it.

So for now, American policy seems to have established a window of restraint for about a year or so, until intelligence confirms that the Iranians are months away from arming their warheads. Then there will probably be a messy, incomplete air campaign that will set back the Iranian nuclear program for perhaps five years and send gas prices sky-high. We will hope that some fissionable material is not already in the hands of Hezbollah, and trust that anti-American global protests will be no worse than the lunacy toward the Danes. Israel will brace for a more horrific terrorist campaign, and we will pray that the Iraqi Shiites are more Iraqi than Shiite.

All that has changed in the past six months is the growing Western realization that radical Islam thrives on appeasement, and really does mean what it says. Once elected, Hamas, despite Western money and support, did not budge from its charter's promise to destroy Israel. Far from withdrawing his pledge to wipe Israel out, President Ahmadinejad doubled-down on the boast by organizing formal Holocaust-denial conferences, the prerequisite for any Jew-hater who wishes to move from rhetoric to action. Unlike Hitler, however, Ahmadinejad outlined in advance not merely the intent but the method of his intended follow-up to the Holocaust.

The burning and killing over the Danish cartoons—coming on the heels of the French riots, the bombings in Madrid and London, and Theo van Gogh's murder in Holland—have shaken the very foundations of Europe. Perhaps the European Union will realize that its 450 million citizens cannot tolerate living in range of radical Islam's missiles, with Ahmadinejad's finger on the button. Thus Holland increased its troop deployment in Afghanistan. Many European newspapers reprinted the cartoons in a show of solidarity. Germany's Angela Merkel compared the Iranian President to Hitler. And even earlier, Jacques Chirac talked of using his country's nukes against state sponsors of terrorism. We are coming to a showdown where the headshaking over "bad or worse" is no longer an excuse for inaction, but a tragic acceptance that there is still a bad choice, after all.

Victor Davis Hanson is a senior fellow in military history and classics at the Hoover Institution, and the author most recently of A War Like No Other: How the Athenians and Spartans Fought the Peloponnesian War (Random House).



Mark Helprin

EVEN WERE ONE TO BELIEVE THAT, despite its low and stagnant per capita GNP and the world's second-largest reserves of petroleum and natural gas, Iran would invest uneconomically in nuclear power generation, one would also have to disbelieve that it wanted nuclear weapons. But with an intermediate-range strategic nuclear capacity it could deter American intervention, reign over the Gulf, further separate Europe from American Middle East policy, correct a nuclear imbalance with Pakistan, lead and perhaps unify the Islamic world, and thus create the chance to end Western dominance of the Middle East and with a single shot destroy Israel.

Iran's claim of innocuous nuclear ambitions comports both with the Islamic doctrine of *taqqiya* (literal truth need not be conveyed to infidels) and the Western doctrine of state secrecy (the same thing), and is part of a strategy of deception and false compromise deployed to buy time. After almost three years, the administration has maneuvered the International Atomic Energy Agency to refer Iran to the Security Council, where it will fall under the protection of Russia and China, who will make any resolution meaningless or veto it outright. In the event of sanctions, Iran can sell oil to China in exchange for all the manufactures it might need, trade on the black market, and eventually reenter the world economy after the inevitable unveiling of Iranian nuclear weapons stimulates the resignation of the West.

Were Russia not playing a double game, it would not have agreed last December to upgrade the Iranian Air Force and sell Iran 29 SA-15 surface-to-air missiles for the protection of key facilities. Russia and China can operate in contradiction of what many assume to be their self-interest because they have always had a different appreciation of and doctrine relating to nuclear weapons, they are willing to live dangerously, they are the least likely targets, and the agitation they support roils the smooth surface of the Pax Americana to their maximum opportunity and relief. For example, chaos in the Middle East makes Russia in comparison a stable supplier of energy and shifts European resources and dependency to Russia's advantage.

Other than the likely nothing, what will the U.S. have done in the months and years ahead to prepare for the failure of diplomacy and sanctions? The obvious option is an aerial campaign to divest Iran of its nuclear potential, i.e., clear the Gulf of Iranian naval forces,

scrub anti-ship missiles from the shore, and lay open anti-aircraft-free corridors to each target. With the furious capacity of its new weapons, the U.S. can accomplish this readily. Were the targets effectively hidden or buried, Iran could be shut down, coerced, and perhaps revolutionized by the assured rapid destruction of its oil production and transport. The Iranians know their obvious vulnerabilities, but are we aware of ours?

In this war with a newly revived militant Islam, we think systematically and they think imaginatively. As we strain to bring the genius of imagination to our systems, they attempt to bring systematic discipline to their imagination, and neither of us is precluded from success. Despite our superior power, its diminution by geography, over-commitment, and politics means that they might confound us. And because they believe absolutely in the miraculous, one must credit their stated aim to defeat us in the short term by hurling our armies from the Middle East and in the long term by collapsing Western civilization.

If like his predecessors Salah-a-Din, the Mahdi, and Nasser, Mr. Ahmadinejad goes for the long shot, he may have in mind to draw out and damage any American onslaught with his thousands of surface-to-air missiles and anti-aircraft guns, by a concentrated air and naval attack to sink one or more major American warships, and to mobilize the Iraqi Shia in a general uprising, with aid from infiltrated Pasharan (Revolutionary Guard) and conventional elements, that would threaten U.S. forces in Iraq and sever their lines of supply. This by itself would be a victory for those who see in the colors of martyrdom, but if he could knock us back and put enough of our blood in the water, the real prize might come into reach. That is, to make such a fury in the Islamic world that, as it has done before and not long ago, it would throw over caution in favor of jihad. As simply as it can be said, were Egypt to close the canal, and Egypt, Saudi Arabia, and Turkey to lock up their airspace—which with their combined modern air forces they could—the American military in Iraq and the Gulf, bereft of adequate supply, would be beleaguered and imperiled.

In trying to push the Iraqi snake by its tail, we have lost sight of the larger strategic picture, of which such events, though very unlikely, may become a part. But because the Iranian drive for deployable nuclear weapons will likely take years, we have a period of grace. In that time, we would do well to strengthen—in numbers and mass as well as quality—the means with which we fight, to reinforce the fleet train with which to supply the fighting lines, to press forward with ballistic missile defense against

sea-launched intermediate range missiles, and to plan for a land route from the Mediterranean across Israel and Jordan to the Tigris and Euphrates. And even if we cannot extricate ourselves from nation-building and counter-insurgency in Iraq, we must have a plan for remounting the army there so that it can fight and maneuver as it was born to do.

To make these provisions will secure our flanks and give us a freer hand in the potentially difficult project of denying to a rogue nation of 68 million people, with a well developed military and a penchant for rash action, the nuclear weapons it is bent on acquiring and rushing to construct. Our problem in Iraq has been delusion and lack of foresight. Iran is bigger and more powerful. What a pity it would be either to do nothing or once again to lurch forward with neither strategy nor thought.

Mark Helprin, whose novels include Winter's Tale and A Soldier of the Great War, is a senior fellow of the Claremont Institute. He served in the Israeli army and Air Force, and was Adviser in Defense and Foreign Relations to Republican presidential nominee Robert Dole.



Josef Joffe

THERE IS A GOOD CHANCE THAT NOT so far into the future, historians will look back on the foreign policy of George W. Bush and pronounce him the worst president since James Madison. What, Madison, the Founding Father? He was, of course, a great man, but he also presided over America's most foolish war, the War of 1812, in the course of which the British burned down half of Washington. It was foolish to take on the mightiest sea power on earth—and while Britain was fighting for its survival against Napoleon. And so Jefferson warned: it was not in the U.S. interest "that all of Europe should be reduced to a single monarchy. Surely none of us wish to see Bonaparte conquer Russia and lay thus at his feet the whole continent of Europe. This done, England would be but a breakfast...." And, one might add, America a lunch.

The War of 1812 was the wrong war against the wrong foe at the wrong time—and so is Iraq. Never mind that the WMDs and the terror connection didn't exist, and that democracy is just as lofty a goal in 2003 as the freedom of the seas was in 1812. But unlike the War of 1812, the one in Iraq was a strategic blunder worthy of General Custer.

America's real foe has been revolutionary Iran ever since the Khomeinists took power in 1979. Their terror-sponsoring arm extends from Berlin to Beirut, from Kiryat Shmona in Northern Israel to Gaza-by-the-Sea. Iran's nuclear weapons program goes back to the days of the Shah, but it went into high speed during the 1990s while Washington was indulging its obsession with a weak and isolated Saddam. Today, Tehran is the single most powerful threat to American interests in the Middle East, and a threat to the stability of this tinderbox to boot.

How did this come to pass? The U.S. targeted the wrong enemy in its quest to make the world safe through democracy. Pursuing the lofty goal of regime change, the Bush Administration failed wretchedly to calculate the strategic consequences, the first commandment of statecraft. Imagine how overjoyed the Khomeinists must have been when U.S. forces marched into Baghdad! Here the Great Satan had done them a triple favor: He eliminated their worst rival (Iraq) from the board and so overturned whatever regional balance of power there was. He liberated the oppressed Shia majority and handed Iran's comrades-in-faith preeminence in Iraqi politics. And he entangled himself in a costly, inconclusive insurgency war that Tehran could manipulate at will.

As a result, the strategic position of the Iranians has never been better, and they know it. First, Tehran told the Europeans to go fly a kite; no, Iran would not abandon the road to nuclear weapons. Then they repeated the message to the rest of the world, including the Russians and Chinese. Then they started waving the oil weapon, while threatening Israel with extinction.

And well they might. They know that the U.S. will not launch another war while the one in Iraq is not exactly proceeding on schedule. Should the U.S. do so anyway, Iran will unleash its terror armies throughout the region and hit tanker traffic in the Gulf. One tanker will be enough to double the price of oil. Or put it this way: how much punch can diplomacy deliver when it is disjoined from the credible threat of force?

Are there no options? Our neocon friends who gave us the war in Iraq now mumble about Iranian regime change from within. Yet the days of Mossadeq, when Americans and Britons could mastermind a coup, are over. There is neither an army nor a potent opposition that can be turned against the Khomeinists, for the first thing a totalitarian regime does is to eliminate all competing centers of power.

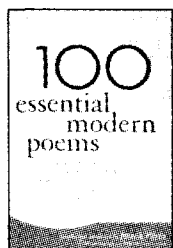
Or does anybody believe that the denial of visas or landing rights throughout the West can

stay the hand that grasps for the bomb? The most effective counter is to stop the passage of oil out of Iran, and the flow of refined products in. But who will join such a double-embargo when oil fetches \$65 per barrel?

This is Cold War II, in that it must be fought without recourse to arms. The prescription is the same: deterrence and alliance-building—or in George F. Kennan's immortal words, "long-term, patient, but firm and vigilant containment of [Iranian] expansive tendencies," which will lead to the "break-up" or "mellowing" of Khomeinist power.

Now, imagine an America not entangled in the 2003 Iraq war—its reputation boosted by the quick victory in Afghanistan, its troops free to pounce, its alliances undiminished by the intra-Western family fight over the war. Iran's President Ahmadinejad may be crazy, but he is not stupid. He would know a giant when he saw one—rather than poke at what he thinks are its feet of clay.

Josef Joffe is publisher-editor of *Die Zeit* (Germany), adjunct professor of political science at Stanford, and Abramowitz Fellow in International Relations at the Hoover Institution. His book, *Überpower: The Imperial Temptation of America* (W.W. Norton & Co.), will be published in June.



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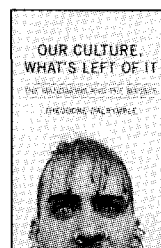
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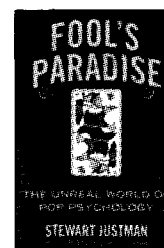
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THE WAR OVER THE WAR POWERS

The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11,
by John Yoo. University of Chicago Press, 378 pages, \$29



DURING THE RECENT SENATE HEARINGS on Judge Samuel Alito's nomination to the Supreme Court, Senator Joseph Biden pressed Alito to denounce John Yoo's controversial defense of presidential initiative in taking the nation to war. Alito was noncommittal. Biden rightly observed that many constitutional scholars hold that Congress must authorize most, if not all, significant military actions by the United States abroad. Yoo, on the other hand, maintains, as he first argued in a seminal 1996 law review article, that the president has full constitutional authority to act initially and that Congress, after the fact, can check executive folly by denying the president the means to conduct war and, in extreme cases, by impeaching and removing him from office.

A professor of law at the University of California at Berkeley and visiting scholar at the American Enterprise Institute, Yoo served from 2001 to 2003 in the Office of Legal Counsel in the U.S. Department of Justice. There he did much to fashion the Bush Administration's expansive view of the president's independent constitutional authority in the war on terrorism. The first half of *The Powers of War and Peace* is Yoo's mature statement concerning the relative constitutional powers of the president and Congress to initiate and sustain military hostilities. The second half focuses on key constitutional issues regarding the treaty power,

including whether the president may unilaterally suspend or terminate treaties (according to Yoo, he may), whether treaties are "self-executing" (they are not) or require positive legislation to have domestic effect (they do), and whether international agreements endorsed through the normal legislative process ("congressional-executive agreements") may substitute for formal treaties, which require two-thirds of the Senate to agree but not the House of Representatives (they may not). In Yoo's view, getting the Constitution right with respect to the war and treaty powers is vitally important in a post-9/11 world threatened by international terrorist organizations and rogue regimes, and in which critical policy issues—such as arms control, human rights, and environmental protection—are increasingly subject to international law and organizations.

ALL AGREE THAT THE PRESIDENT, ON his own authority, may respond militarily to attacks on the United States. At the Philadelphia Convention, an early draft of the Constitution had given Congress the power "to make war." When this clause came before the delegates, James Madison of Virginia and Elbridge Gerry of Massachusetts proposed changing "make" to "declare," "leaving to the Executive the power to repel sudden attacks." The change was made and not revis-

ited. Similarly, the draft constitution made the president the "commander in chief of the Army and Navy of the United States, and of the Militia of the Several States." Without objection (or indeed any substantive debate), the commander-in-chief clause made its way into the Constitution.

How best to understand this division of authority? Some argue that Congress must authorize all uses of military force other than self-defensive measures. "[T]he power to repel sudden attacks" is, then, the single exception to the rule of congressional prior approval. This view is buttressed by the fact that Congress is also given the power to "grant Letters of Marque and Reprisal," by which government may authorize private parties to use force in limited ways against foreign nations or individuals under the color of law. If captured, those using force would be treated as prisoners of war, rather than as pirates, murderers, or robbers. Many scholars take the assignment of this power to Congress as further evidence that the framers expected Congress to authorize all military conflicts, from full-fledged wars down to limited reprisals.

Yet, as Yoo notes, "the United States has committed military forces into hostilities abroad at least 125 times" in the Constitution's history. In only five of these cases did Congress declare war. In some others (such as the 1798



Quasi-War with France, the Vietnam War, the 1991 Persian Gulf War, and the 2003 invasion of Iraq) Congress authorized military action without formally declaring war. Most often, however, military force was used without prior congressional approval. A recent example is the 1999 air war in Kosovo and Serbia (to which Yoo devotes several pages), which was conducted under NATO's auspices but that Congress refused to authorize in advance. In short, historical practice diverges sharply from the dominant scholarly view of what the Constitution requires.

ONE WAY TO RECONCILE ACTUAL PRACTICE with the Constitution would be to recognize an inherent authority in the president—as commander in chief, holder of the “executive power,” and the organ of foreign relations—to use the military for limited purposes, such as protecting American citizens or property on the high seas or overseas, serving in peacekeeping or other humanitarian missions, fulfilling treaty obligations, or otherwise protecting the nation's vital interests. Under this more expansive view, presidents could do much on their own authority, up to, but not including, engaging in a large-scale or protracted war with another nation. Such a view would accept the legality of nearly all uses of military force throughout U.S. history (whether or not authorized by Congress), but would draw the line at a conflict like the Korean War, which lasted three years and resulted in more than 33,000 American combat deaths—and was never formally authorized by Congress.

According to this view, military actions that involve hundreds or perhaps a few thousand troops (but certainly not hundreds of thousands) and that can be accomplished in days, weeks, or a few months (but not many months or a year or more) could well pass constitutional muster in the absence of prior congressional approval. If this seems woefully imprecise, it nonetheless accords, its proponents argue, with the Constitution's inherent flexibility, which was intended to allow the president to protect the nation's interests in a hostile world. It is also broadly consistent with Congress's own 1973 War Powers Resolution which, though it defines the president's war-making powers quite narrowly in its “Purpose and Policy” section, does not actually require the president to receive congressional approval before acting militarily and permits military engagements to continue for two to three months without specific authorization. (A provision that allowed the House and Senate to force the end of mili-

tary action at any time by a simple majority vote of both bodies—not subject to a presidential veto—was effectively ruled unconstitutional in an unrelated case in 1983 that overturned all such “legislative vetoes.”)

As noted, this approach would permit much, but not all, that a president might like to do militarily without seeking congressional authorization. Retaining the power to “declare war,” Congress must approve in advance the movement of the United States from peace to war, even if that war is not a “total” or “perfect” war like World War II. Conflicts like the Korean War, the Vietnam War, the Persian Gulf War, and the invasion of Iraq all required (and all but the first received) formal congressional authorization. But lesser military interventions—such as the 1983 invasion of Grenada, the 1986 bombing of Libya, the 1989 intervention in Panama, the 1992-1994 relief mission to Somalia, and the several military interventions in the former Yugoslavia in the 1990s—do not necessarily activate the “declare war” power of Congress (though Congress may weigh in after the fact through its appropriations power). The presumption here is that Congress's power to “declare war” is equivalent to the power to authorize or commence war, but *not* the power to authorize or commence any and every use of force abroad. The key, then, is distinguishing between “real” wars and lesser military interventions.

JOHN YOO'S INTRIGUING ARGUMENT IS THAT this is the wrong way to think about the meaning of Congress's power to declare war because “the Framers did not understand the phrase ‘declare war’ to amount to the power to ‘make war’ or ‘commence war.’” Instead, declarations of war “make public, show openly, and make known the state of international legal relations between the United States and another nation.” In so doing, they clarify the rights and responsibilities of the nation's own citizens, neutral nations, belligerents, and other parties under the “law of nations.” Moreover, under current U.S. law, declarations also activate the president's special domestic powers, such as seizing foreign property and arresting enemy aliens. “Even the Supreme Court has suggested that in times of declared war, certain actions by the federal government would survive strict scrutiny but would certainly fail if attempted in peacetime.”

Yoo presents an impressive body of evidence that neither those who wrote the Constitution nor those who ratified it understood that the president would need Congress's approval before engaging military forces abroad. British

constitutional and political history “formed the context within which the Framers would have understood the new Constitution,” writes Yoo. Under that history, the full power to engage the nation in war resided in the Crown—that is, the executive. Parliament checked the king principally through control over appropriations and, in some cases, impeachment of ministers. During this period the leading authorities on the law of nations understood declarations of war to be legal pronouncements not necessary to authorize hostilities. In fact, the two political theorists who most influenced the founding generation—John Locke and the Baron de Montesquieu—agreed that the power over war and peace was executive in nature. Britain's pre-eminent jurist and legal commentator, William Blackstone, agreed.

Throughout the 17th and 18th centuries, Britain engaged in some wars that were not declared at all (hence Alexander Hamilton's comment in *Federalist* 25 that “the ceremony of a formal denunciation of war has of late fallen into disuse”) and others that were declared only some time after hostilities had begun. The framers would have known, for example, that hostilities in the Seven Year's War, in which many colonists served, began in North America two years before Britain formally declared war on France in May 1756.

IN THEIR FIRST CONSTITUTIONS, YOO NOTES, all but one of the states “gave the governor the exclusive power to decide when to use the militia or required that he consult the [executive] council [but not the legislature] before calling forth the military.” In Virginia, for example, the state constitutional convention rejected Thomas Jefferson's proposed language that expressly denied the governor the power to “declare war or peace, issue letters of marque or reprisal, [or] raise or introduce armed forces.” According to Yoo, “The exception ‘that proves the rule’” was “South Carolina's radically different” approach in its constitutions of 1776 and 1778. Although the first made the governor “commander-in-chief,” it stipulated that he “shall have no power to make war or peace...without the consent of the general assembly and legislative council.” No other state imposed such a restriction. The revised 1778 constitution was even clearer: “the governor and commander-in-chief shall have no power to commence war, or conclude peace” without the approval of the legislature.

Similarly, both the Articles of Confederation and the U.S. Constitution prohibited the states from “engag[ing]” in war without the consent of Congress unless actually invaded

or in imminent danger of invasion. As Yoo insists, constitution makers at the time of the founding knew how to require legislative authorization for military actions when they wished it. Yet they imposed no such explicit restriction on the American presidency. During the debate over the Constitution's ratification, some Anti-Federalists complained of an overly powerful presidency; yet as Yoo shows, in states such as Virginia, "Federalists *never* described Congress's power to declare war as a check on the president, even though it was very much in their interest to do so" (emphasis in the original). In using the phrase "declare war" and vesting this power in Congress, the Constitution's drafters rejected the alternatives "make war" (1776 South Carolina Constitution), "commence war" (1778 South Carolina Constitution), "engage in war" (the Constitution's prohibition on the states), and "levying war" (part of the Constitution's definition of treason). Why? Because "[a]t the time of the Constitution's ratification 'declare' carried a distinct and separate meaning from 'levy,' 'engage,' 'make,' or 'commence.'"

Yoo concludes from all this (and more) that "the president...has the domestic constitutional authority to initiate military hostilities without any authorizing legislation." Perhaps the signal contribution of *The Powers of War and Peace* is this assemblage of compelling evidence in defense of the president's constitutional authority to take the initiative in the use of force abroad.

YOO RECOGNIZES, HOWEVER, THAT NOT all the evidence from the founding period supports his expansive view of presidential power. Other scholars cite leading framers such as James Wilson, James Madison, and even Alexander Hamilton to support congressional preeminence in decisions to go to war. Some part of Yoo's analysis addresses this evidence, but he leaves the reader wishing for more. For example, in his famous exchange with Madison in 1793 on presidential power (the Pacificus-Helvidius debates) Hamilton wrote:

While, therefore, the legislature can alone declare war, can alone actually transfer the nation from a state of peace to a state of hostility, it belongs to the 'executive power' to do whatever else the law of nations, cooperating with the treaties of the country, enjoin in the intercourse of the United States with foreign powers.

Only Congress, Hamilton acknowledges, can "actually transfer the nation from a state of

peace to a state of hostility." Here Hamilton seems to read "declare" war as equivalent to "make" or "commence" war. Although Hamilton's formulation does not require that all uses of force must be pre-approved by Congress, it does suggest that Yoo's view is even more expansive than that of one of the founding generation's foremost proponents of a powerful constitutional presidency.

Perhaps Yoo would respond that Hamilton was using the phrases "state of peace" and "state of hostility" in the legal sense denoted by the power to "declare war." Perhaps Hamilton was intentionally playing upon the ambiguity of the phrases, leading the reader to think one thing when something more limited was meant. In his analysis of *Federalist* 69, for example, where Hamilton argues that the American president will have less war-making power than the British king, Yoo concludes that Hamilton engaged in "rhetorical excess" and perhaps intentional ambiguity. We should not, after all, be surprised if rhetorical demands occasionally trump theoretical precision. Nonetheless, one wonders whether the Hamilton of the Pacificus essays would have argued, as Yoo does, that the president does not need formal congressional authorization to commit American forces to conflicts like Korea, Vietnam, the Persian Gulf, and Iraq.

Under Yoo's interpretation of the Constitution is there any limit to the scale of military conflicts that the president on his own authority may initiate? As Senator Biden asked Judge Alito, does the president, for example, have the constitutional authority to invade Iran without congressional approval? It is not surprising that Senator Biden and those who advise him concluded that Yoo places no limits on presidential initiative. After all, Yoo asserts that "the president...has the domestic constitutional authority to initiate military hostilities without any authorizing legislation"; that the Constitution provides for "unilateral presidential warmaking"; that "[w]ith large militaries designed to project overwhelming force throughout the world at his disposal, the president as commander in chief holds the initiative to use force abroad"; and that Congress's control over appropriations "renders unnecessary any formal process requirement for congressional authorization or a declaration of war before hostilities may begin." Insofar as Congress can check presidential war-making—Madison as Helvidius had written that "[w]ar is...the true nurse of executive aggrandizement"—it is only after the fact.

DESPITE YOO'S EMPHATIC DEFENSE OF "unilateral presidential warmaking," there appear to be some limits, by his own account, to what presidents may lawfully do. "A declaration of war," he writes, "only perfected, or made 'completely effectual,' hostilities between two nations.... [A] 'declared' war was only the ultimate state in a gradually ascending scale of hostilities between nations." Thus, when the framers changed Congress's power from "make war" to "declare war," they "set a limit" on presidential power: "the president could not unilaterally take the nation into a total war, but...he might be able to engage the nation in hostilities short of that." The constitutional language "prevented the president from unilaterally igniting a total war, yet simultaneously barred Congress from encroaching on his exclusive authority to conduct hostilities short of that." It appears, then, that the president is not allowed to commence "total war," because only Congress may "declare war." If this is right, then only Congress may commence, or authorize the commencement of, total war. Can we conclude that if the issue is total war, then to "declare" war is, in fact, equivalent to "levy," "engage in," "make," or "commence" war?

This conclusion seems to shift the debate from the difference between "declare" and "commence" to the difference between "total war" and "hostilities short of that." Would, for example, an invasion of Iran to change the regime, eliminate the nuclear threat, and establish a liberal democracy there involve the kind of "total war" that, apparently, only Congress can authorize, or would such actions amount merely to "hostilities short of that"? What Hamilton wrote in 1787 could well be said today: "the ceremony of a formal denunciation of war has of late fallen into disuse." It has been more than 60 years since the U.S. formally declared war against anyone; yet during that time the nation has engaged in more than a few conflicts that we consider wars, including at least the Korean War, the Vietnam War, the Persian Gulf War, and the Iraq War. In each case there were prudential reasons for not declaring war; nonetheless, Congress formally authorized all but the first. One might think of these authorizations as the functional equivalent of a declaration of war.

If these conflicts fall short of what we call "total war" (such as World War II), they seem in scope and duration to rise to the level of hostilities that, according to Blackstone, "a denunciation of war ought always to precede... [so] that it may be certainly clear that the war is not undertaken by private persons, but by

the will of the whole community.... [I]n order to make a war completely effectual, it is necessary...that it be publicly declared and duly proclaimed...; and, then, all parts of both the contending nations, from the highest to the lowest, are bound by it." Need a war be "total" in order to be made "completely effectual"? And doesn't a joint resolution formally authorizing war make the conflict "completely effectual" in a legal sense? If so, then the limit placed on presidential war-making by the Constitution may be something less than "total war," as that phrase is conventionally understood.

AMERICAN HISTORY CONFIRMS THAT there are many times when it is necessary to project force beyond the nation's borders. Often this must be done too quickly or too secretly to obtain congressional approval in advance. If the Constitution does not provide for such energetic executive actions, then we must either pay the costs of inaction or do what has to be done as an "emergency" measure outside the Constitution. John Yoo sides with the framers in rejecting both alternatives. He recognizes, as Hamilton wrote in *The Federalist*, that "[t]he circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can be wisely imposed on the power to which the care of it is committed." A well-written constitution must be equal to "a struggle with public necessity." Otherwise, leaders will violate the law whenever necessity requires. The danger of taking extra-constitutional (or unconstitutional) "emergency" actions, Hamilton warned, is that "every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpalable."

Although Yoo seems to go beyond even Hamilton in what he would allow presidents to do under the Constitution, he makes a compelling case that Congress need not formally authorize many, perhaps most, military commitments abroad, for which the president possesses ample constitutional authority. It is rare that one scholar fundamentally recasts the debate on a constitutional issue of pressing public importance. In *The Powers of War and Peace*, John Yoo has done exactly that.

Joseph M. Bessette is Alice Tweed Tuohy Professor of Government and Ethics at Claremont McKenna College.

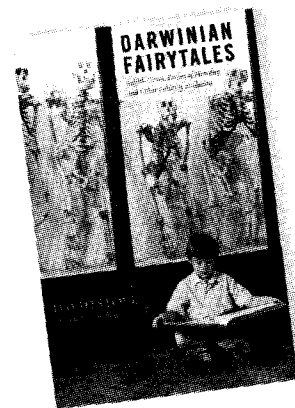
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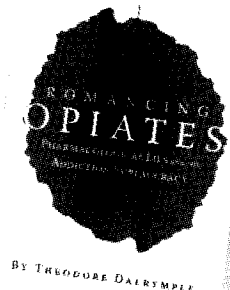
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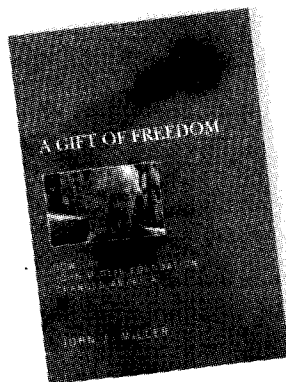
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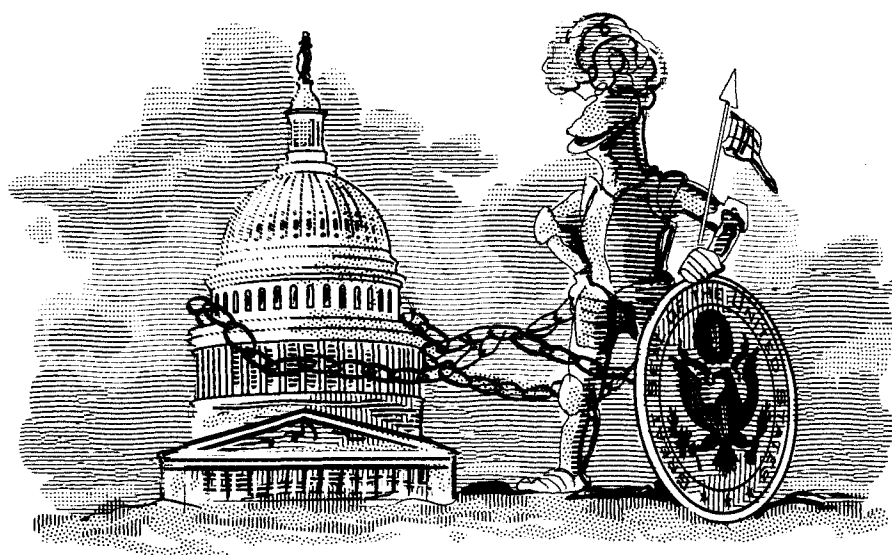
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Book Review by Charles A. Lofgren

HIJACKING HISTORY

War Powers: How the Imperial Presidency Hijacked the Constitution, by Peter Irons.
Metropolitan Books, 320 pages, \$26 (cloth), \$16 (paper)



THE CONSTITUTION ASSIGNS CONGRESS the powers "To declare War, grant Letters of Marque and Reprisal, and... provide for calling forth the Militia to...repel Invasions," as well as to raise armed forces and make rules for governing them. It gives the president the executive power and makes him commander in chief. The original understanding of these allocations continues to be warmly debated, as does the subsequent record of war-making under the Constitution. Have presidents, congresses, and courts adhered to whatever division of powers they are supposed to observe or enforce?

Peter Irons explores this and related questions in *War Powers*, part of a series of books ("The American Empire Project") devoted to exposing the nation's "imperial ambitions" and "discuss[ing] alternatives to the dangerous trend" toward empire. Irons himself is a political scientist best known for his work on the Japanese-American relocation cases from World War II. In this book, his predilections quickly surface. He moves easily from reconstructing an original understanding that assigns Congress the bulk of war-initiating authority, to implicating a "supine Congress" as a "willing, often eager accomplice" of the president in a massive "subversion" of the Constitution, assisted by "compliant federal judges" and even the general public. They all promote an imperial design feeding an economic system that requires global resources and markets.

In holding that Congress originally received nearly complete war-initiating authority, with the president empowered only to respond defensively to attack or invasion, Irons is in decent company. (At least I prefer to think so, having argued a similar position in print.) Yet he fails to engage weighty arguments put forth by equally respectable proponents of presidential authority. (John Yoo comes to mind.) Instead, he directs the book at "concerned American citizens...who wish to become better informed about these issues, without having to master scholarly jargon or deal with overheated rhetoric." But if care and accuracy matter, *War Powers* should give concerned citizens considerable pause. Space allows only a sampling of Irons's missteps.

IRONS'S DISCUSSION OF THE CONSTITUTION'S origins foreshadows what follows. It may be trivial that he badly botches the Mount Vernon conference in 1785. (He has four states attending, not two, and he wrongly describes it as unsuccessful.) Less easily dismissed is his misreading of James Madison's "Vices of the Political System of the United States," completed just prior to the 1787 Convention. "Chief among the vices," Irons claims, "was the absence, in the Articles of Confederation, of the tripartite system of government that Locke had proposed a century earlier in his *Second Treatise of Government*, with functions divided among legislative, executive, and judicial branches." In

reality, Madison's document ignored the structure of the Confederation government because its concern was the balance between state and central authority. But if Madison *had* taken up the issue, he surely knew his Locke well enough not to have associated the functional division between the legislative, executive, and judicial branches with the Englishman. (Try Montesquieu.)

Downright negligent is Irons's use, a bit later, of a comment from Madison attacking presidential initiative in war-making:

Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether *a war ought* to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.

Describing this as "[p]erhaps the most authoritative statement on the primacy of the legislative over executive powers in this field," Irons places the passage in the midst of his discussion of the meager comments on war-making during the Constitutional Convention and the ratification debates. Whether or not Madison's remark accurately reflects the original understanding, the unwary reader has no way of knowing that he actually wrote it about five years later, in

1793, after the outbreak of war between Britain and France had begun to polarize American politics.

Indeed, evidence suggests that Irons himself is unaware of the circumstances of Madison's comment, even though they are hardly obscure. The new European war provided the context. Because it threatened to involve the United States, George Washington formally proclaimed American neutrality in April 1793, relying on his authority as president. Thomas Jefferson, then Secretary of State, also favored America's steering clear of the conflict, but argued Washington lacked authority to issue a *neutrality* proclamation without consulting Congress. (Accommodating Jefferson, Washington hence avoided using the word "neutrality.") Yet when Irons turns to the related events, he misstates their sequence in several confused and curious paragraphs and has Jefferson supporting the president's unilateral "authority to issue what might be considered treaties." We learn too that Jefferson "had an unlikely ally on this question, Alexander Hamilton [then Secretary of the Treasury], and an equally unlikely adversary, James Monroe [*sic*]." Monroe did question the constitutionality of the proclamation as it was implemented, but context indicates Irons meant to identify Madison as Jefferson's adversary. More important for understanding Madison's comment quoted above, this was the occasion for Hamilton, writing as "Pacifcus," to defend Washington's neutrality policy. Irons mentions the Pacifcus essays, but omits Hamilton's key argument that the powers of foreign relations and war are inherently executive, with exceptions in favor of Congress to be narrowly construed.

IRONS THEN CONTINUES WITH HIS CONSTITUTIONAL odd couple, reiterating that "Hamilton and Jefferson became unlikely allies on the question of presidential authority to issue the neutrality proclamation." "It was equally surprising," he adds, "that Jefferson's longtime friend and political compatriot James Madison entered the debate on the other side." In fact, Jefferson encouraged Madison to answer Hamilton. "For god's sake, my dear Sir," he pleaded, "take up your pen, select [Hamilton's] most striking heresies and cut him to pieces in the face of the public. There is nobody else who can and will enter the lists with him." Madison's ensuing "Helvidius" letters challenged Hamilton's constitutional interpretation and included the comment wrongly placed by Irons in the midst of the Constitution's framing and ratification.

Irons might have returned to Hamilton during the Quasi-War of 1798-1801, when the U.S. launched an undeclared but congressionally

authorized naval war against France to defend American shipping. In May 1798, before the legislative program was complete, Hamilton (now in private law practice) responded to a request for advice on instructions to Navy captains. He wrote:

Not having seen the law which provides the *Naval Armament*, I cannot tell whether it gives any new power to the President[,] that is[,] any power whatever with regard to the employment of the Ships. If not, and he is left on the foot of the Constitution, as I understand to be the case, I am not ready to say that he has any other power than merely to employ the Ships as Convoys with authority to *repel* force by force, (but not to capture), and to repress hostilities within our waters including a marine league from our coasts. Any thing beyond this must fall under the idea of *reprisals* & requires the sanction of that Department which is to declare or make war.

During the Quasi-War, moreover, President John Adams's words and deeds indicate he apparently agreed with Hamilton's assessment that without congressional authorization, the president's options were severely limited.

Yet Irons neglects Hamilton's position in 1798, which offers support for his own views on congressional supremacy. As mentioned above, Hamilton had argued in 1793 that exceptions, in favor of Congress, to the president's executive powers are to be narrowly construed. If he applied this rule in 1798, he evidently concluded that even under a narrow construction of its authority, Congress rather than the president holds the power to initiate general naval reprisals. In December 1801, of course, he *seemed* to reverse himself, criticizing now-President Jefferson for disclaiming presidential authority to initiate offensive action against Tripoli after its declaration of war against the U.S. (In fact, unknown to Hamilton, Jefferson had secretly ordered offensive action.) Hence Hamilton remains a bit of a puzzle. Or perhaps not: in his 1801 attack on Jefferson, he placed considerable stress on Tripoli's already having declared war. In the Quasi-War, France had refrained from doing so.

AS IRONS MOVES INTO THE 19TH CENTURY, the problems continue. By his account, Congress chartered the Second Bank of the United States as part of preparations for the War of 1812. (The charter came in 1816, *after* the war.) In 1846, we discover, General Zachary Taylor provoked the attack that began the Mexican-American War by sending

a detachment south of the Rio Grande. (He did not. It was provocative enough for Mexico that Taylor's forces took up positions in the disputed territory north of the river.) When Irons reaches the Civil War, he implies that Justice David Davis spoke for the whole Supreme Court in *Ex parte Milligan* (1866), denying that either Congress or the president had authority during the war to institute military commissions in loyal areas where courts were open. (Irons properly sees *Milligan* as an aberration within the overall pattern of judicial acquiescence in war measures, but four of the justices maintained that although the president had no authority to establish the tribunal that convicted Milligan, Congress could have done so.)

THE 20TH CENTURY? IN WORLD WAR I, Irons states astoundingly that although "the British and Germans had both interfered with American shipping [prior to U.S. entry into the conflict],...neither had violated the established rules of warfare...." (Both glaringly did so, but British seizures proved more tolerable than German sinkings.) From the end of World War II, another tidbit emerges: "Just a few months after Roosevelt's sudden death...Harry Truman learned about the development of nuclear weapons and made the decision to drop atomic bombs on two Japanese cities." (He learned of the Manhattan Project within *two weeks* of FDR's death in April 1945.) Irons gets the Korean War wrong, too, writing, "From Korea in 1950 through the Gulf War in 1991, Congress...allowed presidents...to commit forces on the basis of resolutions that constituted functional declarations of war." For some of the later conflicts, this is arguably correct, but for Korea, Congress passed no authorizing resolution. The error is strange, because earlier in the book Irons gets Korea partly right, noting the lack of a resolution.

In due course, Irons turns to the 1991 Gulf War, which "President George H. W. Bush launched...to restore his sagging political fortunes, in addition to [*sic*] his determination to secure access to Middle Eastern oil." Irons finds that it "produced only one significant judicial test of Bush's decision to commit troops to combat." Here he identifies *Dellums v. Bush*, decided in December 1990 by federal judge Harold Greene, who finally dismissed as premature an attempt by 54 members of Congress to enjoin going to war without congressional approval. Before doing so, however, Greene denied that the case presented a nonjusticiable political question and indicated that Bush had no authority to commit forces to major hostilities on his own authority.

But "only *one* significant judicial test"? Irons inexplicably fails to mention a second case, de-

cided the same day, which better supports his view about "compliant federal judges." In *Ange v. Bush*, federal judge Royce Lamberth ruled against a National Guard sergeant's attempt to prevent his deployment to the Persian Gulf. "The judicial branch," Lamberth opined, "is neither equipped nor empowered to intrude into the realm of foreign affairs where the Constitution grants operational powers only to the two political branches and where decisions are made based on political and policy considerations." But Lamberth denied this conclusion gave the president free rein, for "Congress possesses ample powers under the Constitution to prevent Presidential overreaching, should Congress choose to exercise them." These included impeachment and control over appropriations. Of course, neither *Dellums* nor *Ange* really tested "Bush's decision to commit troops to combat." In the actual event, Bush finally obtained a resolution from Congress, in January 1991, but Irons is conflicted about it. Besides calling it a "blank check," he contends the elder Bush misread the Constitution in denying he needed the authorization. Several pages later, however, Irons favorably compares the 1991 resolution's focus on Iraq to the open-ended resolution George W. Bush sought after 9/11.

Aside from court opinions, one senses that Irons has not gone far into the basic documents. Typically, he takes a primary-source quotation from one of the several secondary accounts on which he heavily relies, perhaps breaking it up with a phrase of his own. For the surrounding text, he paraphrases the secondary account. An example comes from Louis Fisher's *Presidential War Power* (1995). Describing the background to the Spanish-American War of 1898, Fisher wrote, "Congress passed a concurrent resolution in 1896 offering the 'friendly offices' of the United States to Spain for the recognition of an independent Cuba. Spain rejected the offer." In Irons's account, this becomes: "In 1896, Congress adopted a resolution extending the

'friendly offices' of the United States to Spain in recognizing an independent Cuba. But the Spanish government rejected the offer."

Another example involves a presentation in 2003 by Congressman Peter DeFazio (D-Oregon). Discussing Congress's response to President Bush's request in September 2001 for a resolution against terrorism, DeFazio asserted (misleadingly) that "congressional negotiators succeeded in significantly narrowing the scope of the final resolution" from "[t]he original language...[that] would have authorized the President 'to deter and pre-empt any future acts of terrorism or aggression against the United States.'" He then claimed (also misleadingly) that "the final resolution limits the President to retaliating against only those nations, organizations, or persons responsible for the September 11th attacks.... [T]he resolution was signed into law on September 18th, a mere seven days after the attacks...." Here is Irons's version: "Disturbed by the sweeping language, congressional negotiators finally persuaded the president to accept a resolution that limited him to retaliating only against those nations, organizations or persons responsible for the 9/11 attacks. Bush signed the congressional resolution into law on September 18, 2001, just seven days after the attacks." Perhaps with better license, Irons recycles parts of *War Powers* almost verbatim from his own *People's History of the Supreme Court* (1999).

DESPITE ITS ERRORS AND QUESTIONABLE interpretations, *War Powers* presents an intriguing puzzle. Consider first that Irons approvingly quotes Madison at the beginning of the Constitutional Convention on dividing power between the different branches and levels of government. "What his opinion might ultimately be he could not yet tell," Madison's own notes record him as saying. "But he should shrink from nothing which should be found essential to such a form of Govt. as would provide for the safety, liberty and hap-

piness of the Community." Consider also that in his *People's History of the Supreme Court*, Irons allowed that he "believe[s] firmly that the Framers—despite their flaws—shaped the Constitution as a 'living' document, whose basic principles would endure but whose separate provisions would grow in meaning as American society grew in size and diversity." There too he approvingly quoted his "judicial ideal and inspiration," Justice William Brennan: "[T]he genius of the Constitution rests not in any static meaning it may have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs."

In short, Irons evidently accepts the need for a government attentive to the safety of the community, and he endorses an evolving Constitution. Why then is he so rigidly set on holding the president, Congress, and the courts to an original understanding that denies the flexibility in war-making required for national security in the 21st century? The solution to the puzzle is most likely Irons's underlying opposition to war itself, however authorized or initiated. By his telling, it mesmerizes and co-opts almost everyone, in and out of government. Neither Congress nor courts exercise independent judgment about hostilities. Worst of all, an evil system rumbles on.

In the end, in Irons's view, "there is just one realistic prospect for ending the subversion of the Constitution and returning the war-making power to Congress, where it was placed by the Framers and where it belongs." His proposed strategy is "slow, incremental grassroots activism" with people "coming together in the kinds of town meeting gatherings that sparked the colonists to rebel against the imperial rule of King George III." Not only is Irons's scholarship sloppy; the remedy he envisions is truly unbelievable. Why would anything change?

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Book Review by Benjamin Balint

GOD AND HAROLD AT YALE

Jesus and Yahweh: The Names Divine,
by Harold Bloom. Riverhead, 256 pages, \$24.95



HAROLD BLOOM, THE 75-YEAR-OLD one-man humanities department at Yale, has some 30 books under his belt, but the latest is in style and substance the most Bloomian yet. *Jesus and Yahweh* turns out to be as much about Bloom as it is about the Hebrew and Greek Bibles and their divine protagonists.

The book brims with his characteristic stylistic brew, a blend of encyclopedic fluency and flippancy. Unseasoned by anything modest, tentative, or cautious, the main ingredients, as before, are the witty, whimsical, freewheeling asides—some pure brilliance, some brilliance generously mixed with bombast, and all designed to *épater les fidèles*.

The new book also extends some of Bloom's characteristic insights. It takes from *The Anxiety of Influence* (1973), his theory of poetic influence, the idea that literary revision is a form of deliberate misreading, or "misprision." Later poets are thrust into the condition of "belatedness," envious inheritors seeking to displace their overwhelmingly powerful predecessors. In *Jesus and Yahweh*, Bloom translates his theory from poetic to sacred texts, which for Bloom is no translation at all. As he puts it in the earlier volume: "The distinction between sacred and secular texts results from social and political decisions, and thus is not a literary distinction at all."

It might be said that each of Bloom's successive books revises his original insight, which would explain why he so often seems to be paraphrasing himself. From *Kabbalah and Criticism* (1975), the new book borrows the claim that the kabbalists, in struggling to introduce a totally new religious impulse into an old tradi-

tion, founded "the classic paradigm upon which Western revisionism in all areas was to model itself ever since." From *The Book of J* (1990), Bloom's attempt to show that the Bible's so-called J author (or Yahwist) was an aristocratic 10th-century B.C. woman, it lifts the insistence on treating the Biblical God as an all-too-human figure. Much of the vocabulary used here to describe this figure, finally, is furnished from *Shakespeare: The Invention of the Human* (1998), as when the new book describes Yahweh as combining "Lear's unpredictable furies, Falstaff's surging vitalism, and Hamlet's restlessness of consciousness."

And yet despite the familiar moves, their culmination in *Jesus and Yahweh* is carried off to very surprising effect. The first revelation is that Bloom's ideas about the Jewish and Christian scriptures inspired his theory of literary influence, and not vice-versa. This is true first of all in the chronological sense. Bloom reports that he first read the Gospels in Yiddish; the first book he owned as a child was a Yiddish translation of the New Testament, brought by a missionary to his house in the East Bronx. (His parents never learned to read or speak English.) Telling us that he has been thinking about the friction between the two Bibles from the very beginning of his career, Bloom mentions that *The Anxiety of Influence* originally included a large section on the Scriptures, later excised.

The revelation about the direction of inspiration is true in a deeper sense, too. At the heart of *Jesus and Yahweh* lies the argument that the Hebrew Bible-New Testament rivalry is not just another example of the anxiety of influence, but its ultimate expression. The Greek

Bible—Bloom calls it the Belated Testament—is "obsessed with its anxious relationship to the Law and the Prophets, and seeks to resolve a complex anguish resulting from that overwhelming influence, by the strongest and most successful creative misreading in all of textual history." The Christian misreaders sought to put the Hebrew Bible into "textual slavery" by reordering it and taking it as a prefiguration of the New Testament. To do so, Bloom says, they had to be "superbly gifted in the arts of usurpation, reversal, and appropriation."

BUT THE MASSIVE APPROPRIATION WAS made necessary precisely by the overwhelming literary strength these writers confronted. "The aesthetic dignity of the Hebrew Bible," Bloom writes, "is simply beyond the competitive range of the New Testament.... In the aesthetic warfare between the Hebrew Bible and the New Testament, there is just no contest." (Bloom had already told us in *A Map of Misreading* [1975] that he preferred the Hebrew Bible to Homer.)

This in itself is not a new observation. Nietzsche declared: "To have glued this New Testament, a kind of rococo of taste in every respect, on to the Old Testament to make one book, as the 'Bible,' as 'the book par excellence'—that is perhaps the greatest audacity and 'sin against the spirit' that literary Europe has on its conscience."

But the idea, at least in its elaborated form, is new in Bloom, and it brings us to the book's second revelation: his attitude toward Christianity. In a delightful 1979 essay, Cynthia Ozick accused Bloom, the self-proclaimed Gnostic Jew, of "idol-making," and of "artistic anti-Ju-

daism." But in his latest book, Bloom evinces both a surprising Jewishness—"my Orthodox Judaic childhood lingers in me as an awe of Yahweh"—and a startling anti-Christianity. If *Jesus and Yahweh* is right, Christians misread not only Yahweh, but Jesus, too—and they are polytheists to boot.

Beyond the fact that the historical Jesus was "the Jew-of-Jews, the Jew proper," he remains unknowable beneath the seven irreconcilable versions of him presented in the New Testament; he is "a concave mirror, where what we see are all the distortions each of us has become." Bloom reminds us that "there are no verifiable facts about Jesus of Nazareth.... There is not a sentence concerning Jesus in the entire New Testament composed by anyone who ever had met the unwilling King of the Jews." This did not prevent Christians from turning him into a theological entity: Jesus Christ, the Son of God, is according to Bloom "totally smothered beneath the massive superstructure of historical theology."

BLOOM INTERPRETS THE TRINITY AS an essentially polytheistic "structure of anxiety" in which God the Father—whom Bloom finds "lacking in personality"—is a mere shade of Yahweh. Yahweh, "the West's major literary, spiritual, and ideological character," has not, according to Bloom, "survived in Christianity." In J's portrait—the earliest biblical layer—Yahweh is "anxious, pugnacious, aggressive, ambivalent," not to mention all too often absent. But unlike Jesus Christ and God the Father, he is emphatically not a theological God. Indeed, Bloom asserts that "no God has been more human."

Bloom's insistence on the irreconcilability between Yahweh and his New Testament successors—deeper even than the irreconcilability between, say, the Gospel of Mark's Jesus and the Gospel of John's Jesus—is important for two reasons. First, it entails, as the title of the book's penultimate chapter puts it, "the irreconcilability of Christianity and Judaism." Here Bloom claims that any notion of a Judeo-Christian tradition is a myth, while "'Christian-Jewish dialogue' isn't even a myth, but invariably farce." This is so, he says, because "Greek theological formulations and Hebraic experiential memories simply are antithetical to each other." (Bloom is given to sweeping pronouncements of irreconcilability. In *Where Shall Wisdom Be Found?* [2004], he relates that Allan Bloom gave him a copy of his translation of Plato's *Republic* with the inscription: "For

Harold—Hoping for a reconciliation between Athens and Jerusalem." Harold replied that there can be no such resolution, since "what Isaiah is doing and what Socrates and Plato are doing are totally antithetical.")

Second, the gap between the two divinities amounts for Bloom to a demonstration that contrary to conventional wisdom, the religion we today call Judaism is not Christianity's parent. "Rather, Judaism and Christianity are enemy brothers, both stemming from Second Temple Judahisms [sic]."

Because Bloom is principally an imaginative reader, reading him often requires tolerating discursiveness and digression as the price of the ingenious leaps that take him beyond existing modes of literary or biblical criticism. Sometimes these digressions fall into opacity. In two chapters called "Self-Exile of Yahweh," and "Yahweh's Psychology," for instance, Bloom indulges in bewildering kabbalistic talk of Yahweh's "tripartite consciousness of being," divine sparks, and *zimzum*, the Hebrew term for the process by which Yahweh "multiplies by contraction."

On other occasions, Bloom's digressions merely distract. For instance, he devotes one of the book's longer quotations to Leo Strauss, whom he disparages, sparing no cliché, as the "oracle of the neocons who persuaded George W. Bush to launch his Baghdad Crusade." In a recent interview in *Il Foglio* with Amy K. Rosenthal, Bloom qualified his judgment:

Yes, I wrote this, but that doesn't mean that Leo, whom I knew and who was a great scholar, is responsible for his students and his students' students. Leo Strauss was a great Jewish sage.... Leo on Spinoza was magnificent. His book on persecution and the art of writing is stupendous and of what Leo called 'writing between the lines and reading between the lines'—all of that was quite magnificent and has nothing whatsoever to do with the absurd political usage to which he is being put. In fact, most of what the neocons took from Leo came out of *Thoughts on Machiavelli*, which is a brilliant book and which I think they are rather weakly misreading.

More troublingly, however, Bloom sometimes asks us to tolerate not digression but an imprecision so thick that it threatens to deflect his argument. There is no doubt that the New Testament can fruitfully be read as a belated

but strong misreading of its predecessor. But as we've seen, Bloom argues his way from that observation of Oedipal misprision to a claim about the irreconcilability of the two scriptures and the divine characters they present. But this conflates rivalry with irreconcilability. Are not most rivalrous sons all the more strongly attached to their fathers precisely by rivalry's passions?

From there, in turn, Bloom deduces his denial of Judaism's parentage of Christianity. But this reduces religions to their sacred texts. Bloom acts as if literary irreconcilability entailed historical irreconcilability. Despite the chasm separating their foundational texts—a gulf he maps expertly—Judaism and Christianity have, as a matter of historical fact, had quite a lot to do with one another. More deeply, however, Bloom's discussion of Yahweh, Jesus, and God the Father rests on the claim that we cannot encounter these figures apart from the texts that record their teachings and actions; in other words, Bloom assumes that we encounter them in the same way we approach Lear. In assuming that the divine—Jewish or Christian—has no existence apart from the text, Bloom evinces a curious inability to conceive of non-textual religious encounters. In the end, he turns out to be a reader par excellence, but also perhaps merely a reader.

THIS CAN BE PUT ANOTHER WAY. IN *Jesus and Yahweh*, Bloom recalls Kafka's remark that Freud was (referring to the greatest of Jewish Biblical commentators) the Rashi of contemporary anxieties. We might say that Harold Bloom is the Rashi of misreadings, a kind of contemporary sage who, due perhaps to the excesses of reading itself, himself misreads—sometimes forcefully, sometimes weakly.

In one of the chapters on the kabbalah with which he draws his book to a close, Bloom invokes Gershom Scholem, the matchless scholar of Jewish mysticism, as one of "the prophets of Judaism" he most wholeheartedly accepts. The prophet, as it happens, had something to say about Bloom. Reacting to a 1975 essay that Bloom had devoted to Scholem, the latter wrote: "I found many sentences quite remarkable and worth considering. He certainly read me with an imaginative mind." Applied to the present book, that judgment seems to strike just the right note.

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Book Review by Cheryl Miller

THE ONE THAT GOT AWAY

Melville: His World and Work, by Andrew Delbanco.
Alfred A. Knopf, 448 pages, \$30



WHEN HE REVIEWED HERSEL Parker's thousand-page *Herman Melville: A Biography, Volume 1, 1819-1851* for the *New York Review of Books*, Andrew Delbanco cautioned other would-be biographers: "It is worth keeping in mind an apposite comment by Melville's contemporary, Ralph Waldo Emerson. 'Geniuses,' Emerson remarked in 1850, 'have the shortest biographies' because their inner lives are led out of sight and earshot; and, in the end, 'their cousins can tell you nothing about them.'"

Delbanco should have heeded his own advice. The Julian Clarence Levi Professor in the Humanities at Columbia University has focused his powers of criticism on a wide range of subjects in such books as *The Puritan Ordeal* (1989) and *The Death of Satan: How Americans Have Lost the Sense of Evil* (1995). But in turning his attention to Melville, Delbanco chose a singularly unpromising subject for a biography. Many of the facts of Melville's life—to say nothing of his inner life—simply remain a mystery. As Delbanco notes, only about 300 of Melville's letters survive, compared to 12,000 by Henry James.

Delbanco tells the story of an early rise and a long decline. Born in 1819, Melville was the third child of Allan and Maria Gansevoort Melvill. He had a proud lineage. His grandfathers were both heroes of the Revolutionary War, and he could trace his stock to Scottish

nobility. But Allan, an importer, was a thriftless fortune-hunter, always on the heels of the latest get-rich-quick scheme. He died when Melville was 12 years old, leaving the family in financial straits.

The young Melville left school and took a number of odd jobs. He became the errand-boy at a bank, a teacher, and, finally in 1839, a sailor. Off and on, he spent three-and-a-half years at sea. His experiences went largely undocumented except for Melville's own fictionalized account of the Marquesas Islands in *Typee*—the modestly successful book that launched his writing career. Four more novels followed, all sea adventures and each less successful than the last.

Just under 30, Melville married and moved to New York City. According to Delbanco, he purchased his first readable edition of Shakespeare shortly after (having previously read scantily in poorly printed copies), began a lifelong friendship with Nathaniel Hawthorne, and started his great masterpiece, *Moby Dick*, or *The Whale*. His wife, Lizzie, described in a letter how Melville would work furiously "at his desk all day not eating anything till 4 or 5 o'clock" and then, according to his own account, leave his study "in a sort of mesmeric state."

But the exhilaration ended in 1851 when *Moby Dick* was published to critical headscratching and public indifference. Stung by

the book's reception and desperate to stem his money troubles, Melville gave up his sea tales and began *Pierre*, or *The Ambiguities*, a Victorian romance. *Pierre* was an even greater disaster; one New York paper reviewed it under the headline "Herman Melville Crazy."

So Melville started writing short fiction, including "Bartleby, the Scrivener" and "Benito Cereno," for magazines. But his health failed him as his debts grew. Hoping to revive his spirits, Melville's father-in-law sent him to travel in Rome, Egypt, and the Levant. Upon returning to America, Melville took to the lecture circuit, where he muffled his words and sometimes appeared drunk, scaring off the few listeners he had. He made another attempt to start over—this time, a return to sailing—but he gave it up after hearing his latest work had been rejected by the publishers. Depressed and resigned, in 1866 he took what Delbanco calls "a four-dollar-a-day, six-day-a-week job" as a Customs House inspector, where he remained until 1885. He died in 1891, largely forgotten, with his last great work, *Billy Budd*, unpublished. It was only in 1921 that another Columbia professor, Raymond M. Weaver, rediscovered *Moby Dick* and began the Melville revival with his biography, *Herman Melville: Mariner and Mystic*. In 1924, Weaver found *Billy Budd* stored in a tin bread box in Melville's granddaughter's house.

BECAUSE THE SPARSE RECORD OF MELVILLE'S life does not suffice for a lengthy work, Delbanco is left to pad. To be sure, he does not give us the mountains of data that Parker does: catalogs of books Melville might have skimmed, lists of various rentals and sales by the Melville family, endless accounts of family feuds and pieces of gossip. And Delbanco is also more careful about filling in the blank pages of Melville's life. Parker is happy to invent entire scenes and conversations. Delbanco is more circumspect, and when he is tempted to speculate, he gives his reader due notice.

But Delbanco is not so much concerned with the historical Melville as with the Melville who

"keeps up with the preoccupations of the moment," who "remains as current as ever." His biography aims less to illuminate Melville's life than our own. "A literary text acts as a kind of mirror," Delbanco quotes a literary theorist as saying—and the reflections we see are of ourselves.

So while the historical Melville remains opaque, we're introduced to a whole host of other Melvilles that have been invented for our times. There's "myth-and-symbol Melville, countercultural Melville, anti-war Melville, environmentalist Melville, gay or bisexual Melville, multicultural Melville, global Melville." Delbanco dutifully provides samplings of each: *Pierre* as a Freudian exploration of the sexual

underworld, "Bartleby, the Scrivener" and *Confidence-Man* as proto-Marxist denunciations of capitalism, "Benito Cereno" as an indictment of American innocence. One is reminded of Stubb's invocation in *Moby Dick*: "Book! ...you'll do to give us the bare words and facts, but we come in to supply the thoughts."

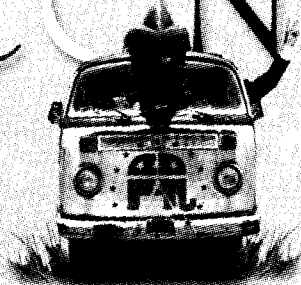
DELBANCO'S APPROACH INADVERTENTLY suggests that Melville still matters to us not because of the genius of his work but rather because we can attach to him the fashionable opinions of the time. The ease with which we can read into the novels our own opinions appears to be evidence of Melville's continued relevance. Thus Delbanco embarks on a short history of how *Moby Dick* has been read throughout the ages: "[In the 1940s]... Ahab seemed to predict Adolf Hitler's monomaniacal ranting against the Jews. In our own day, he is invoked as anticipating George W. Bush's obsession with hunting down Osama bin Laden, then Saddam Hussein." He even does a LexisNexis search at one point, counting the number of times Melville is mentioned in news articles after the 9/11 attacks. In one of the book's more humorous remarks—the humor being apparently unintentional—Delbanco welcomes to the "community of Melville critics" the actor Richard Gere and former Senator Gary Hart, each of whom compared President Bush's decision to invade Iraq with Ahab's mad chase after *Moby Dick*. Later, he writes that "Benito Cereno," the tale of a mutiny on a slave ship, is the "most salient of Melville's work" for us "in our time of terror and torture," warning against "the kind of moral opacity that seems still to afflict America as it lumbers through the world creating enemies whose enmity it does not begin to understand." This isn't literary criticism but second-rate punditry and polemicism.

And when Melville's opinions contradict our own? Delbanco admits to some minor misgivings when Melville celebrates that "now notorious term," Manifest Destiny, in his novel *White-Jacket*. Delbanco concedes that the passage in question is rather unequivocal: "We Americans are the peculiar, chosen people—the Israel of our time; we bear the ark of the liberties of the world...we cannot do a good to America but we give alms to the world." As Delbanco informs us, however—invoking the authority of Lionel Trilling, no less—Melville represented both the "yes and no" to his own culture. This little sleight of hand appears to mean that the passage can be read straight when it suits us (as in 1848 when Melville wrote it, or during the Cold War when it seemed "an expression of self-serving generosity in the spirit of the Marshall Plan") or it can be read ironically (as during our own more enlightened times when it has become "a passage of...

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unsettling ambiguity"). Here—as elsewhere—there is no attempt to get at what Melville really thought or why he might have thought it.

Instead this is the literary equivalent of those "Choose Your Own Adventure" books: you need only pick which Melville you like best and turn the page. Do you prefer Melville, the champion of America "who imagines a world of graceful converts to the American Way," or the critic who depicts America as a "ship of state sailing toward disaster under lunatic leadership as it tries to conquer the world"? (Your answer, it seems, depends on your stance on the Iraq War.) No matter which you choose, Delbanco assures us, Melville is "as vast and contradictory as America itself."

A WASH IN THIS HODGEPODGE OF DUELING interpretations and the numerous controversies Melvilleans love—Did Melville beat his wife? Abuse the kids? Was he gay, as Somerset Maugham believed? Or was he an "androgynous personality," as Henry Murray would have it?—the reader yearns for someone to take charge. Some critics have commended Delbanco for refusing to give pat answers, but after hundreds of pages of "maybe, maybe not," you want someone, *anyone*, to exercise some judgment. Delbanco is by no means unwilling to descend into the mud, but he does so in the style of a reporter too fastidious to report directly on the scandal but more than happy to report on the "rumors" going around. This above-the-fray attitude can be maddening as when Delbanco tells us, "The quest for the private Melville has usually led to a dead end, and we are not likely to fare better by speculating about his tastes in bed or bunk." Sensible enough, one thinks—or would think, if the preceding 30 pages hadn't been spent in fervid analysis of such momentous questions as whether while on ship Melville "availed himself of male partners, or relieved himself in as much privacy as he could find...or waited for the next contact with island women."

Part of the motive behind this approach seems to be the desire to sell books, which leads Delbanco to try to be trendy. We are told that *Pierre* "anticipates" Freud's study of sexual desire, that *Moby Dick* "anticipated" the modernist prose of Woolf and Joyce and is "the work of a twentieth-century imagination." Numerous works win praise for their "postmodern" qualities. Delbanco litters his text with pop culture references (Stanley Kubrick, Donald Trump, and Tiny Tim all make an appearance). He even tries to spice things up with some amateur psychoanalyzing of Melville, especially on the subject of sex. It's not that Delbanco's interest in the prurient is completely unfounded. He is surely right to say that the environment in *Typee* is "sex-drenched," what with its wind that

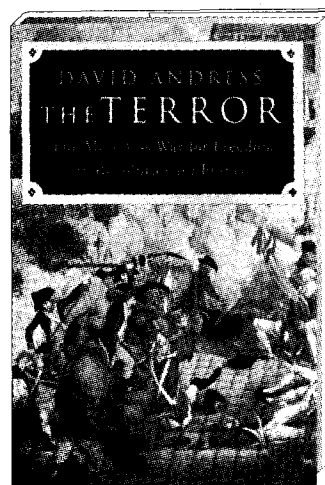
blows like a "woman roused." But to say that the way the plot of "Benito Cereno" unfolds is like being sexually teased? Or that the chimney in Ishmael's dream is phallic? Or that Isabel's ear in *Pierre* is vaginal? Delbanco seems particularly fond of Freud, but unfortunately he hasn't learned that sometimes a cigar is just a cigar.

DELBANCO'S DESIRE TO ENTICE THE reading public is understandable—it must be daunting to write a book about an author whose books kept getting pulped. But beyond this desire and, as it were, giving it hope, lies the nice sentiment that great work, like Melville's, constantly "renew[s] itself for each new generation." The richness of Melville's writing is such that each reading generates new insights, provides us with yet more grist for the mill. And each reader, provided he or she is thoughtful and attentive, can give us a unique vantage point from which to look at a work.

There is truth to this. Literary criticism is not just "chattering about Shelley," as one detractor would have it. But taken too far you get a Melville so "vast and contradictory" that he means everything—and therefore nothing at all. His work becomes the coin that Ahab nails to the mast in *Moby Dick*: one huge Rorschach inkblot open to infinite interpretations. And Melville himself becomes merely the tutelary divinity of all our little pet projects and preferences. As the famously left-wing playwright Tony Kushner in an interview in the *New York Times* put it, "One falls in love with him, and I certainly have, completely, as most of the other Melville freaks have. I used him unconsciously and consciously when I was writing the second part of 'Angels in America.' I said to myself, 'Herman would approve of this.'"

Of course he would.

Cheryl Miller is a writer living in Washington, D.C.



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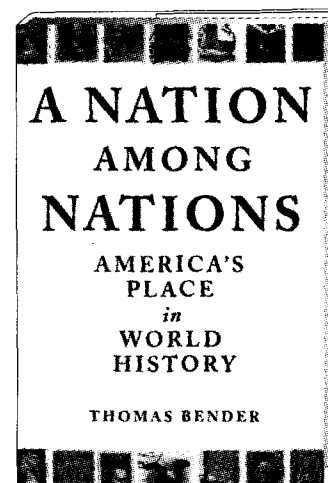
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Essay by Jeffrey Hart

OUR LITERATURE OF EXTREMES

WHY IS GREAT AMERICAN LITERATURE—in this so different from English literature—radical, that is, lacking in the middle registers of experience? Has American society lacked the texture and density that tend to define the human in terms of the social, thus emancipating and glorifying the self against minimum resistance? Or did writers, aware of the tyranny of the democratic majority analyzed by Tocqueville, react against looming conformity by pushing extreme individuality?

Mr. Donoghue, University Professor and Henry James Professor of English and American Letters at New York University, and a very fine critic, tries his hand here with some difficult and problematic works. Emphatically, they are not European. Like our new country itself, these "American classics" often seem to stimulate resistance. Donoghue provides his book with a subtitle, "A Personal Essay," a signal that he will offer some resistance.

The ancestor of Donoghue's book is F.O. Matthiessen's *American Renaissance: Art and Expression in the Age of Emerson and Whitman*, a work of unassailable brilliance which holds up well more than 60 years after its publication. Both Matthiessen and Donoghue discuss a remarkable group of American writers who produced major works within a five-year period: Emerson's *Representative Men* (1850), Hawthorne's *The Scarlet Letter* (1850), Melville's *Moby Dick* (1851), Thoreau's *Walden* (1854), and Whitman's *Leaves of Grass* (1855, first edition). Donoghue adds Twain's *The Adventures of Huckleberry Finn* (1884). These works, collectively, resemble no others. Unlike English literature, they express radical polarities and drastic emotion. Captain Ahab, peculiarly American in his thought, cannot be imagined in ordinary life—Ahab in committee? We do not get to the normality of work, family, and community until we reach William Dean Howells, and he does not much register on the critic's Richter scale. Characteristically, the American classics employ new forms and distinctive styles, and interpreting them involves special difficulties. And of course they have been central to the discussion of what America is, and how it is to be evaluated as a new presence in the world.

These American classics, and what we say about them, also stand at what Lionel Trilling called "the bloody crossroads" where literature and politics meet.

Matthiessen's *American Renaissance* claimed importance for these works in a way that seemed

to reflect the growing power of America in the world. And appearing in 1941, the book (with its aggressive title suggested by Matthiessen's Harvard colleague Harry Levin) was read as buttressing America's cultural legitimacy as a combatant against the Axis.

In making such a claim to world standing, Matthiessen argued that these books represented the *translatio studii*, the passage of learning from one great power to the next. Renaissance writers had looked back and seen empire pass from Greece to Rome, with Virgil challenging Homer, the *Aeneid* replying to the *Iliad* and *Odyssey*. Beginning with Dante, the epic poem or its equivalent had staked a claim to imperial greatness: Dante, Camões, Rabelais, Montaigne, Racine, Molière, Shakespeare's *Henriad* history plays, Cervantes, Goethe's *Faust*. Great powers had great literatures.

Books discussed in this essay:

The American Classics: A Personal Essay, by Denis Donoghue. Yale University Press, 304 pages, \$27 (cloth)

American Renaissance: Art and Expression in the Age of Emerson and Whitman, by F.O. Matthiessen. Oxford University Press, 704 pages, \$35 (paper)

The American energies that would crush the Confederate insurrection—that would confirm America as, in Jefferson's words, an "empire of liberty"—were gathering in books during the 1850s. Matthiessen's evident approval of this development caused his book to become suspect during and after the Vietnam War, when academicians judged the American Renaissance in light of their own political preoccupations. An odd species of critic called the "New Americanist" arose and posthumously charged Matthiessen with enlisting on the American side in the Cold War—a loyalty which, needless to say, they condemned.

Similarly, Donoghue's "Personal Essay" is both literary analysis and political indictment. Donoghue finds elements in the American classics that can be blamed not only for the 1945 atomic bombing of Japan but for American aggression—as he sees it—in the struggle with the Soviet Union. Furthermore, Donoghue indicts the distinctly American elements he finds in these books for the rise of George W. Bush. To be sure, in blaming American literature for

political trends he finds distasteful, Donoghue is far from unique. Quentin Anderson traced the upheavals of the 1960s to the same literary works—especially Emerson's *Representative Men*—and called his book *The Imperial Self* (1972), by which he meant the "imperial selves" running amok at, among other places, Anderson's beloved Columbia University. Ralph Waldo, old fellow, you knew not what you wrought. Or did you?

The American Mind

DONOGHUE DOES FAIRLY WELL WITH Emerson's teaching, which after all Emerson makes plain enough, but he might have paid more attention to Emerson's prose, which enacts the teaching. What we get from Emerson are not thoughts round and complete, and now delivered to the reader. He reacted against the Augustans whose thoughts were in mind before they put them down: "What oft was thought, but ne'er so well expressed," in Pope's words. Emerson's prose gives us Man Thinking. He believed that thinking itself constitutes action, because he considered mind capable of knowing, indeed experiencing, the whole of reality. He was a Transcendentalist because he was a philosophical idealist. A cartoon of the time showed Emerson with a large eye, drawing everything into itself and turning it into thought. But it was the "I" behind the eye that imposed order and intelligibility on the world of sense-data, that enabled man to transcend nature and necessity.

Donoghue begins his analysis with "The American Scholar," Emerson's Phi Beta Kappa Address of August 31, 1837, at Harvard. You can bet that Emerson's "American scholar" is not the usual sort—and certainly not the Harvard students and faculty listening there that day. In a sense, Emerson's address was insulting to his audience, though they are said to have applauded. For Emerson, the "American scholar" is yet to be; or perhaps the only genuine example stood there at the lectern. In this speech Emerson is, as always, inventing a nation that does not yet exist. Just as that large eye draws everything into itself, a man, Emerson says, may transcend social class and the division of labor and be a "priest, and scholar, and statesman, and producer, and soldier." The American scholar through imagination, through Mind, can be *all* of those things, and more. As Walt Whitman later said, "I contain multitudes."

The actual Americans we know too well, Emerson says, are not these bold free-thinkers. His fellow citizens are dull, conformist, "a people too busy to give to letters any more." He hopes that "the sluggard intellect" of this generation "will look from under its iron lids, and fill the postponed expectation of the world with something better than the exertions of mechanical skill."

Look at our world, Emerson demands, possess it with the comprehensive mind:

We have listened too long to the courtly muses of Europe.... We will walk on our own feet; we will work with our own hands; we will speak our own minds.... What would we really know the meaning of? The meal in the firkin; the milk in the pan; the ballad in the street; the news of the boat; the glance of the eye; the form and the gait of the body;—show me the ultimate reason of these matters; show me the sublime presence of the highest spiritual cause lurking, as it always does lurk, in these suburbs and extremities of nature.

This was a declaration of independence, and American possibility. If you sense Whitman there listening you would be right. In a few years he would say, "I was simmering, simmering, simmering. Emerson brought me to a boil." The first edition of *Leaves of Grass* appeared in 1855, eighteen years after Emerson's Phi Beta Kappa Address. Emerson saw America as possibility and called our nation to self-invention and greatness. Gertrude Stein said that America was the oldest nation because it was the first to enter the 20th century. When we read Emerson, we may be tempted to say with Harold Bloom that Emerson is the American Mind. Tempted to say that, but not quite conceding it. Didn't Emerson leave a great deal out?

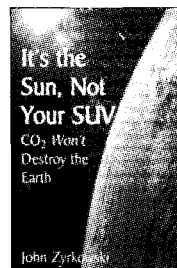
The Great White Whale

DONOGHUE THEN TURNS TO MOBY Dick, linking it to Emerson as Melville himself did. This is an American novel indeed, so individual it resembles nothing else—unless one goes back, in one respect only, to such eccentric, jammed-with-learning, 17th-century compendia as Burton's *Anatomy of Melancholy*, the sort of thing that Jonathan Swift tried to satirize out of existence with *A Tale of a Tub*. As Donoghue writes,

We are reading a disparate book; parts of it are the descriptions of the natural world, sermons, soliloquies, elucidations of the trade and appurtenances of whal-

Ah, Spring!

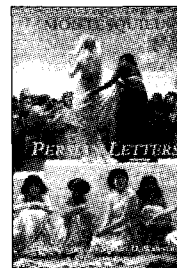
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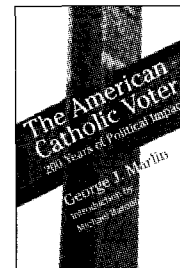
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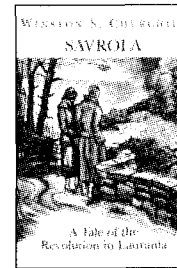


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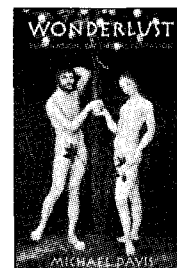


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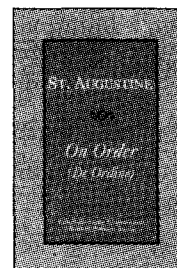
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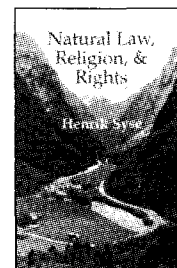
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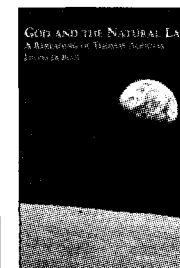
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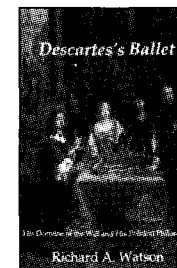
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ing; parts allude to revenge tragedy, epic poetry, romances, yarns of the sea, adventure stories, Cervantes's *Don Quixote*, Milton's Satan, Shakespeare's Macbeth, Lear, and the Fool. Readers have not known how to read the white whale.

It should be added that *Moby Dick* is a kind of myth, in the sense that people who have not read the book know what it is "about": a man with a monomaniacal passion to kill the Great White Whale. Other myths in that sense include Robinson Crusoe, Don Juan, Don Quixote, and Faust, all embodying an extreme instance of a recognizable human motive. But *Moby Dick* differs from all of these because of its allegorical reach. What is the white whale? Donoghue quotes Matthiessen to good effect:

Melville created in Ahab's tragedy a fearful symbol of the self-enclosed individualism that, carried to its furthest extreme, brings disaster both upon itself and upon the group of which it is a part. He provided also an ominous glimpse of what was to result when the Emersonian will to virtue became in less innocent natures the will to power and conquest.

This brings to mind the men of will who fought the Indians, pushed the railroads across the continent, built the Brooklyn Bridge, tossed up skyscrapers, and became corporate titans. Indeed, Matthiessen's frontispiece to the *American Renaissance* is a portrait, immensely evocative, of Donald McKay, who built the clipper ships *Flying Cloud*, *Sovereign of the Seas*, *James Baines*, and *Lightning*. But that only shows the limits of such a comparison. McKay was both heroic and flawed, but he was no Ahab, who is unique in his isolation and destructiveness.

The power of Melville's Ahab and of his White Whale transcends such cultural references and defeats almost all attempts at interpretation. Donoghue is excellent in showing how Melville's language presses against the boundaries of meaning to the point of self-destruction. That *Moby Dick* cannot be categorized is suggested by the varieties of interpretation cited by Donoghue in Northrop Frye, Yvor Winters, Robert M. Adams, James Gulletti, all sailors laboring on the critics' *Pequod*.

Not content to leave it at that, Donoghue wanders far out onto the fringes of academic interpretation in his treatment of the literary critics from the post-Vietnam 1970s, the so-called New Americanists, especially Jonathan Arac and Donald Pease. As Donoghue notes, these two viewed F.O. Matthiessen as a Cold Warrior *avant la lettre*, arguing that by defining a group of indispensable American books, Matthiessen

gave moral support to the morally dubious containment policy. In the New Americanist mind, Matthiessen and those 19th-century American books were cultural intercontinental ballistic missiles, which had helped to make the world a grim and tyrannous place.

The New Americanists didn't bother to explicate Matthiessen's actual politics. He was a socialist open to Communism (which is to say, in the parlance of the time, a "fellow traveler") and hostile to the free market. He posited the existence of an American "Gold Curtain" but disputed the reality of the Soviet "Iron Curtain." He considered the San Francisco labor leader, and Communist, Harry Bridges an exemplary American politician. In his book *From the Heart of Europe* (1948), Matthiessen wrote benignly of the Czech Communist coup, wondered why Czechoslovak diplomat and politician Jan Masaryk had defenestrated himself, and reported that the Polish Communist economy was humming smoothly ahead. Some Cold Warrior.

This brings us to Donoghue's own "contextual" reading of *Moby Dick*; that is, a reading in light of 9/11 and the "war on terror." Bush's war on terror—that unfortunately imprecise phrase—constitutes in Donoghue's mind the obsessive pursuit of a white whale, a war destructive and potentially without limit, with the American people bemused and uncritical (Donoghue clearly wrote this quite a while before publication in 2005). If Ahab is Emersonian individualism run amok, well, Emerson must be back somewhere behind Bush. Donoghue apparently realizes that he has taken this point too far, because he quickly throws in the contextual towel, rights himself, and returns to literary criticism.

Nature and Nature's God

THE NEXT ASKS OF WALDEN, WHAT IS it? Why do we still read Thoreau's account of his sojourn at Walden Pond? Donoghue notes its appeal to "ecocentrics," who urge that wild animals have their place in the scheme of things, that wood, river, and mountain have intrinsic value, and that we should tread lightly upon our given world. (A moderate amalgamation of these thoughts appeals to many under the rubric of "conservation.") The ecocentric is the foe of the anthropocentric, who regards everything in nature as his to exploit. But Thoreau had no objections to the railroads, telegraph, and other aspects of advancing industrialism. Even less, Donoghue adds, is *Walden* any kind of precursor to the 1960s' "tune in, turn on, drop out" ethos. He rejects also the view that *Walden* might describe a pastoral vacation, even though that's how Yeats

took it in his "The Lake Isle of Innisfree," heavily influenced by *Walden*.

Rather, Donoghue argues that *Walden* provides a critical position outside society, a perspective from which to achieve an ironic distance from the concatenation of forces eroding what Trilling called our "authenticity," our spiritual independence, a way of not being defined solely by social role. My own experience of *Walden* is of Thoreau's meticulous observation and writing, the writing itself a force for authenticity.

Donoghue reads *Walden* as autobiography, a neutral term that protects it from being co-opted by the partisans of any point of view, whether ecocentrics, pastoralists, dropouts, whomever. The book is insistently *Thoreau*, with his sour view of other people, social institutions, and even friendship, and his pull towards Eastern thought, sensing an identity between God and Nature. Thoreau sternly guarded his private self, and was *sui generis*, an Emerson without the optimistic vision.

Sin and Damnation

SURPRISINGLY FOR SUCH A GIFTED READER of texts, Donoghue proves inadequate to the task of interpreting *The Scarlet Letter*. His failure here is especially disappointing, given that Hawthorne's masterpiece is so fully achieved that scarcely a word could be changed. Trouble begins as early as the epigraph from Robert Lowell, undistinguished lines of doubtful pertinence:

Leave him alone for a moment or two,
and you'll see him with his head
bent down, brooding, brooding,
eyes fixed on some chip,
some stone, some common plant,
the commonest thing,
as if it were a clue.
The disturbed eyes rise,
furtive, foiled, dissatisfied
from meditation on the true
and insignificant.

Donoghue follows those lines with two statements: "none of the characters has a convinced sense of sin," and "Hawthorne seems to equivocate among the values he brings forward."

In fact, Hawthorne's 17th-century Boston is drenched in a sense of sin—it even has a witch in Mistress Hibbins—and both Hester Prynne and her lover, the Reverend Arthur Dimmesdale, fully share the city's conviction of sin. A major problem with Boston's Calvinism is that it offers no forgiveness. Once you have sinned, that's it.

In Hester's situation, reader, you or I would book passage on the next boat back to England

and civilization. Hester does not. She knows that she would merely carry her sin with her.

Her sin, her ignominy, were the roots which she had struck into the soil.... There dwelt, there trode the feet of one with whom she deemed herself connected in a union, that, unrecognized on earth, would bring them together before the bar of final judgment, and...endless retribution [that is, damnation]. (Chapter V)

Together before the bar of final judgment, perhaps, but not in any other sense. For one thing, when they are buried, their graves are widely separated. But more importantly, Hester and Dimmesdale's views of their sin come to radically diverge: Hester ultimately believes that in her sin is a kind of redemption; Dimmesdale believes no such thing.

In Chapter XVII, "The Pastor and His Parishoner," Dimmesdale says, "I do forgive you Hester...I freely forgive you now. May God forgive us both," but...

We are not, Hester, the worst sinners in the world. There is *one* [italics added] worse than even the polluted priest! That

old man's revenge [Roger Chillingworth, Hester's husband] has been blacker than my sin. He has violated, in cold blood, the sanctity of a human heart. Thou and I, Hester, never did so!

Dante would ratify that judgment, and so does Hawthorne, a judgment that never wavers, contrary to Donoghue.

Hester, however, far stronger than Dimmesdale and perhaps more intelligent, has had long thoughts while alone in her cabin on the outskirts of Boston, and has come to doubt that town's iron Calvinism:

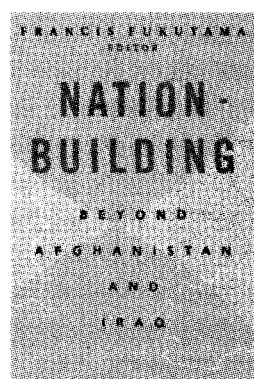
What she compelled herself to believe, —what, finally, she reasoned upon, as her motive for continuing a resident of New England,—was half a truth, and half a self-delusion. Here, she said to herself, had been the scene of her guilt, and here should be the scene of her earthly punishment; and so, perchance, the torture of her daily shame would at length purge her soul, and work out another purity than that which she had lost; more saint-like, because the result of martyrdom. (Chapter V)

She has been compelled to wear her scarlet "A," but its elaborate embroidery signals her independent, in fact ambivalent, evaluation of her sin. For Hawthorne, the division in her mind may have been adumbrated historically by Anne Hutchinson (1590-1643), who had been banished from Boston for preaching the intuitive knowledge of God's grace. The reach of that possibility is reflected in Hester's irrepressible child Pearl, who cannot be contained by Boston, and does eventually take ship for Europe, marriage, and civilization. Dimmesdale in the end collapses and dies, undermined by the vengeful Chillingworth and his own awareness of unendurable hypocrisy.

As a love story, Donoghue compares *The Scarlet Letter* unfavorably with *Wuthering Heights*; but *Wuthering Heights* is really in a category of its own. And, besides, *The Scarlet Letter* is less a love story than the tragedy of a spirited and intelligent woman who, stuck in a bad marriage to a much older man, turned to a good but too weak younger man. Dimmesdale is no Heathcliff, as his name suggests. Hester had partially broken with Boston's Calvinism; Dimmesdale had not. Hawthorne obviously loathes Boston's Calvinism. Though he has a strong sense of the human capacity for evil, he also consistently

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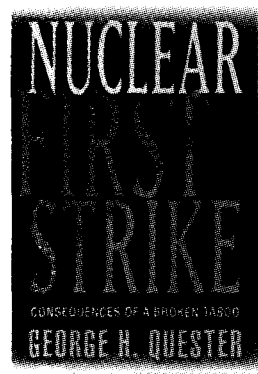


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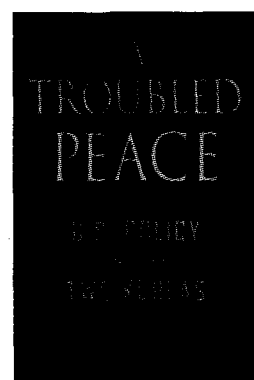
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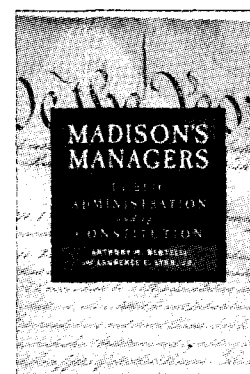
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considers it evil to violate "the sanctity of the human heart." Why Donoghue gets all this so wrong I fail to understand.

Mythic Embodiment

LEAVES OF GRASS IS AN EXTRAORDINARY literary object. "Song of Myself" looks on the page like no other poem, and certainly is different from the verses of other 19th-century poets, of whom Longfellow is preeminent. A working newspaperman on Long Island and in Brooklyn, Whitman brought out the 1855 first edition himself, using the printing facilities of his friends James

and Thomas Rome, and even setting some of the type. Its 8 by 11 inch pages were unusual, but suited to the long lines of his verse. Its green cover bore images of grass blades, and it went on sale at Fowler and Wells, an outlet for phrenological literature. The astonishing poetry thus appeared as a sort of underground, almost private work.

Of course, Whitman sent the first edition of *Leaves of Grass* to Emerson. Whitman had heard Emerson's clarion call to "walk on our own feet; we will work with our own hands; we will speak our own minds...." And now Emerson heard from Whitman, and answered with his famous letter:

I find it the most extraordinary piece of wit and wisdom that America has yet contributed.... I find the courage of treatment that so delights us, and which large perception only can inspire.

Emerson was mildly annoyed when Whitman published this in the *New York Tribune*—and put it in an appendix to the second edition of *Leaves of Grass*.

Like almost all commentators on *Leaves of Grass*, Donaghue deals mainly with Whitman's prophetic teaching, though there is a great deal to say about his verse, which is unrhymed and free but far from anarchic—an analogue perhaps of Whitman's America. His verse rhythms depend on breath and sense; he uses repetition of phrases, the cross-referencing of alliteration, and internal rhyme.

Donaghue correctly defines the "I" of "Song of Myself" as a persona, not the Walter Whitman who was born in 1819 in West Hills on the North Shore of Long Island, who was never in California, did not witness the execution of John Brown, was not born in Kentucky, and never came close to the Alamo. This persona is rather "Walt," vessel of the spirit, the mythic embodiment of America and of the future consciousness of the American.

I loafe and invite my soul,
I lean and loafe at my ease observing a
spear of summer grass.

Do I contradict myself?
Very well then I contradict myself,
(I am large, I contain multitudes.)
I am the poet of the Body and I am the
poet of the soul....
Would you hear of an old-time sea fight?

Among these self-definitions of the "I" as cosmic and universal, we have such exquisite vignettes as the 28 naked young men swimming, watched by a concealed woman who imagines being a 29th. (This scene, from section 11, probably inspired the famous painting by Thomas E. Eakins.) If the emotion is thought to be homoerotic, this being Whitman, it does not matter because the persona "Walt" is everything. As section 11 illustrates, Whitman has added sensuality and sex to Emerson, where they were entirely absent. Some, like Quentin Anderson in *The Imperial Self* (which Donaghue cites), find this imposition of the self disturbing, even "totalitarian." I would say that it is a fiction that permits the author to range at will over the American past and present, containing multitudes.

"Song of Myself," though of course central to *Leaves of Grass*, does not constitute the whole

Benjamin Franklin Unmasked On the Unity of His Moral, Religious, and Political Thought

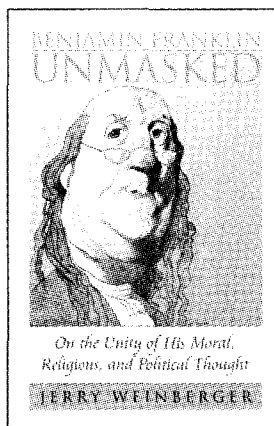
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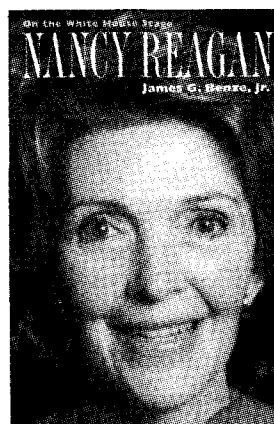


Nancy Reagan On the White House Stage

James G. Benze, Jr.

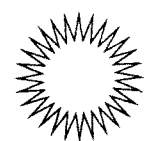
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of Whitman's poetry. He could be masterly in the small lyric, for example "Sparkles from the Wheel," beautifully analyzed by Helen Vendler in *Poets Thinking* (2004). And this is to say nothing of more famous works, of which Donaghue provides a substantial list, sufficient to make a great poet without "Song of Myself."

Donaghue notices the important differences between Whitman's 1855 Preface and that of 1876. In 1855 he had written, "The United States themselves are essentially the greatest poem,...singing an old song of Emerson's, 'America is a poem in our eyes.'" In 1876, he is much less sanguine concerning the present of state of America as poetry: "I count with such absolute certainty on the Great Future of the United States...." Donaghue attributes Whitman's shift from present to the postponed future as his response to the onset of industrialization and the Gilded Age. It might also have had to do with the assassination of Abraham Lincoln, with whom Whitman had a kind of symbiotic relationship. In *Lincoln and Whitman* (2004), Daniel Mark Epstein depicts Lincoln in his and Herndon's law office lying on a couch and reading aloud from the 1855 edition of *Leaves of Grass*. According to Epstein, the influence of Whitman changed Lincoln's oratorical style, his lawyer-like logic giving way to rhythmic expression and inspiration. Lincoln, looking from a White House window once, glimpsed Whitman walking by and commented, "There is a man." Whitman came to see Lincoln as *the American*, even as the mythic "I" of "Song of Myself," and wrote his great Lincoln elegy, "When lilacs last in the dooryard bloom'd."

Unfortunately Donaghue, as if inspired by the catalogues in "Song of Myself," produces at this point a prose catalogue of supposed American outrages: its "murderous adventures in the Philippines, Chile, El Salvador, Guatemala, Nicaragua, Vietnam, Afghanistan, Iraq (to name a few, with probably more to come)." Whitman often uses undifferentiated catalogues to celebrate pure being; Donaghue uncritically condemns what he supposes to be pure wrongdoing, the better to overturn Whitman's optimism. In fact, McKinley did not want the Philippines; but when Admiral George Dewey defeated the Spanish fleet at Manila Bay in 1898, German and Japanese cruiser flotillas nearby had empire in mind. Aguinaldo's rebels were not going to rule the islands, and the United States did not do a bad job in the Philippines. In Chile, Salvador Allende, elected by a minority, and pursuing the "Chilean road to socialism" (which was to say Castroism), made a succession of errors,

climactically trying to nationalize the truckers, individual owners whose strike paralyzed the country. When Allende tried to insert his allies into key military posts, his reward was 18 Chilean Air Force rockets into his Moneda Palace, where, under siege, he killed himself with a machine gun given to him by Fidel. Under Pinochet, Chicago-educated economists reformed the Chilean economy, to the immense good of the Chilean people. Our intervention in Vietnam was part of the containment policy, which worked in Europe—was that wrong?—but failed in Vietnam, not because it was immoral but because Kennedy and Johnson knew little of the strategic situation there. In Central America, there was no reason to tolerate the creation of Soviet client states, and when the Nicaraguan people got a chance to vote in a fair election, they threw the Sandinistas out. The interventions in Afghanistan and Iraq are ongoing, so on these I will not comment. What can be said with assurance, however, is that where the results are in, the U.S. has not done badly. Given how poor is his ability to make historical distinctions, one wonders why Donaghue does not include World War II in his catalogue of outrages.

Individual Experience

IN GREEN HILLS OF AFRICA, HEMINGWAY commented,

All modern American literature comes from one book by Mark Twain called *Huckleberry Finn*. If you read it, you must stop where Nigger Jim is stolen from the boys. That is the real end. The rest is just cheating. But it's the best book we've had. There was nothing before. There has been nothing as good since.

What Hemingway found in *Huckleberry Finn* is obvious. Huck and Jim, away from civilization on the raft, appear in Hemingway's fiction as the "good place"—in "The Doctor and the Doctor's Wife," when Nick and his father seek relief hunting black squirrels in the woods, and later when Nick fishes at "Big Two-Hearted River," skis in the Alps, and Jake Barnes fishes at Burguete. Like Huck, the Hemingway hero lights out for the territory. Both Huck's language and Hemingway's, in different ways, defy genteel conventions. T.S. Eliot, from St. Louis on the Mississippi, thinly conceals *Huckleberry Finn* in "The Dry Salvages," the American entry in his "Four Quartets."

In that remark from *Green Hills of Africa*, Hemingway dismisses the Tom Sawyer episode

that ends *Huckleberry Finn*. Critics have treated that nasty trick at Jim's expense differently, but it represents a problem. Donaghue solves it nicely. He cites Mark Twain 20 years later in 1895 describing *Huckleberry Finn* as "a book of mine where a sound heart & a deformed conscience come into collision & conscience suffers defeat." Twain, explains Donaghue, uses "conscience" here to mean a social construction. As Mark Twain says, "It is merely a *thing*; the creature of *training*; it is whatever one's mother and Bible and comrades and laws and system of government and habitat and heredities have made it."

In *Huckleberry Finn*, the deformed conscience approves of slavery, as well as of society's constricting hypocrisies. Donaghue judges, "In the short run, Huck [on the raft] defeated the deformed conscience or at least rejected it in himself for friendship's sake, but he succumbed to one of its forms—which he found in Tom Sawyer." Exactly: Tom's pranks, cruel though they can be, do not threaten society; but Huck's "sound heart" is subversive. At the end, Huck heads west to the not-yet states of the Union:

I reckon I got to light out for the Territory ahead of the rest, because Aunt Sally she's going to adopt me and sivilize me and I can't stand it. I been there before.

Matthew Arnold defined the "protestant principle" as "individual judgment." What Denis Donaghue, in this like F.O. Matthiessen, has described in *American Classics* is protestant literature, focused on the individual and individual experience. To borrow from Gertrude Stein again: America is the oldest country because it is the first modern country. And modernity is protestant in Matthew Arnold's sense. Donaghue has given us a challenging book, often brilliant, occasionally jagged, and staggering with interpolated editorials. For Donaghue the times are seriously out of joint, and this distorts his book. It is a worthy book, it might even be called generically "American" in its violations of its own form, but, as Hemingway might put it, Donaghue got into the ring with F.O. Matthiessen and *American Renaissance*, and Matthiessen is still Heavyweight Champion.

Jeffrey Hart is professor of English emeritus at Dartmouth College. He is the author of many books, most recently *The Making of the American Conservative Mind: National Review and Its Times* (ISI Books) and *Smiling Through the Cultural Catastrophe: Toward the Revival of Higher Education* (Yale University Press).

THE DEBACLE AT HARVARD

IT IS A DEBACLE AT HARVARD: A GREAT university getting rid of its most outstanding president since James B. Conant, the only outstanding president at a major university today, and doing this for no stated reason. His unofficial detractors brought up only his abrasive style. In no way could it be said either that he had completed his mission, and thus deserved retirement, or that he had failed in it, and so deserved to be booted. The event is demeaning to all involved, but especially to the three main parties—the Harvard Corporation, the faculty, and Mr. Summers.

These three share the blame in descending order, and speaking as an informed observer, not an insider, I will assess it as I see it now.

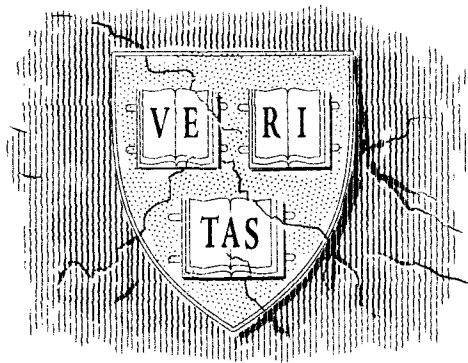
The greatest blame goes to the Harvard Corporation, which brought in Larry Summers and then abandoned him. They set him the task of shaking things up and then became queasy and turned him out when he did just that. For Summers did not truly resign; he was undermined and effectually pushed out. The loss of confidence in him by his superiors was obvious. In the first major public incident of Summers's presidency, his interview with Cornel West, the Corporation supported him publicly. In the second, the controversy over his remarks on the capacity of women for science, the Corporation remained silent. In the third, the reaction to the resignation of Faculty of Arts and Sciences Dean William Kirby, the Corporation actively undermined the president by letting it be known that it was consulting with faculty opposed to him.

In all three incidents, Summers was in the right. Cornel West, for all his virtues, was no model scholar; it's true, apparently, that fewer women than men have capacity for science (or mathematics) at the highest level; the dean had produced very little from the curriculum review that was his main assignment. Summers was trying to hold Harvard to a higher standard of excellence than it was becoming used to—exemplary scholarship from all faculty, hiring only the best without the pressure to meet a quota based on sex, and a challenging curriculum that gets the best out of students as well as faculty.

Since first entering office Summers had many times set forth "greatness" as his goal. He was aware, and he wanted to make the rest of Harvard aware, that there is a difference between a wealthy, famous, and prestigious university and a great one. The prestigious univer-

sity, complacent and self-satisfied, will in time lose its repute; the great one will keep its luster and gain more renown effortlessly, just by being itself and aiming high. To get Harvard back on the right track, however, takes the effort in which Summers was engaged.

Summers proposed a curriculum review that would result in solid courses aimed to answer students' needs, replacing stylish courses designed to appeal to their whims. Such courses would require professors to teach in their fields but out of their specialties; no longer would they assume that the specialized course they want to teach is just the course that students need. Summers also began a move to rein in



grade inflation; he dispelled some of Harvard's political correctness by inviting conservative speakers and looking for conservative professors to hire; he transformed the policy of affirmative action by reducing the pressure to hire more blacks and women as such; he opposed Harvard's hostile attitude toward the U.S. military. Besides these measures, he sought to put or keep Harvard first in science, an intent made possible by a considerable expansion of the university across the Charles River to Allston. This is the substance of Summers's ambitious presidency.

THANKS TO THE HARVARD CORPORATION, all this effort is suspended—who knows for how long. In forcing Summers out, the Corporation surrendered to the "diehard left" (Alan Dershowitz's expression) which had opposed him from the start and is now celebrating in triumph and glee. The Corporation gave a veto to Summers's sworn enemies, thus conferring a power that will be difficult to restrain, much less reclaim. I do not know, but I suppose this was done out of sym-

pathy and fear combined, probably out of fear of not showing sympathy. The Corporation is composed of liberals and leftists, and was reportedly led in this action by the feminist Nannerl Keohane, former president of Duke University, and by liberal democrat Robert Reichauer, president of the Urban Institute.

But the Corporation was also afraid of showing too much sympathy with the Left. It could not summon the manly confidence to avow that Summers was being ousted because his agenda of renewal clashed with the diversity agenda of the feminist Left and its sympathizers. In its letter on Summers's resignation, the Corporation did not criticize him or his policies in any way, not even by hint or allusion. With this failure it let stand the pretensions of the diversity crowd and ducked responsibility for its own action, attempting to palliate imprudence with insincerity.

For this sorry misdeed done to Harvard and to other universities around the world that watch Harvard, the Corporation deserves first prize in responsibility for the debacle. But the Harvard faculty comes a close second.

The faculty opposed to Summers were divided into enemies and critics. His enemies planned or intended his demise as soon as he began to show that he had doubts about the diversity agenda. They led the clamor against him in several faculty meetings in 2004. They were joined by critics, not necessarily of the Left, who had been wounded in encounters with Summers. To get more out of the faculty, he had to ask challenging questions, and those who could not make convincing replies sometimes felt they were being bullied, when in fact they had merely lost the argument. Mr. Summers did not pay attention to Machiavelli's advice that "men should either be caressed or eliminated." Yet in the confrontations in faculty meetings he himself was made to endure reproach and rancor beyond anything seen in the last 50 years at Harvard, including the troubles of the late 1960s.

It's no use trying to persuade the diversity Left; they cannot be moved. But something might have been done to conciliate Summers's critics. They did not mean to bring him down, even though they helped to do that. They were irresponsible in bringing small charges that, combined with the hostility of the Left, had a lethal effect. Unfortunately, Summers with various abject apologies and huge gifts—\$50



million for the cause of bringing more diversity feminists to Harvard—tried to conciliate his enemies rather than his critics. He encouraged his enemies by showing how weak he was and failed to persuade those who might have been persuaded if he had defended himself and attacked his enemies.

THIS BRINGS US TO MR. SUMMERS, surely more sinned against than sinner. He gave a noble try to the reform of Harvard, and he failed. During his ordeal of relentless, humorless criticism and especially in his letter of resignation he was gracious to all who were doing him wrong. He was not a bully but his enemies were. They, not he, deserved to be humiliated. He overmatched them one-on-one, but together these ungenerous weaklings brought him down.

Summers did not defend himself but instead demoralized his defenders with his apologies, leaving them with nothing to defend. We do not know whether he was under constraint from the Corporation, but he did not organize his defenders. He believed it would be divisive to admit that there were "sides" in the dispute. He worried about returning to the partisanship within the faculty of the late 1960s. But of course the other side had organized early on in his administration. He and Dean Kirby allowed the election in 2004 of a Faculty Council (the faculty representative body) composed of his worst enemies, that plotted against him throughout. It would have been easy to expose them, for they tended to overreach. Instead, they succeeded in a goal they never thought they could attain.

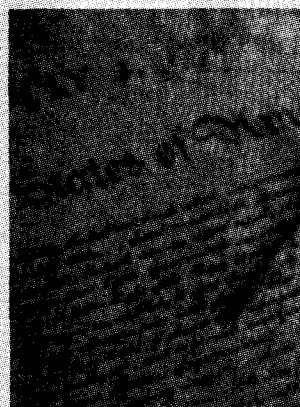
Summers's administration was a one-man show. He did not build a group of supporters to carry out his plans. He relied on himself alone. It was as if his individual superiority would bring victory in a series of single combats without his having to build an army with soldiers, marshals, and a Garde Impériale. His audience would applaud his victories and the common good would be served. Yet this picture is not quite right. Far from imitating Napoleon, Mr. Summers believed in reason and in self-interest as the object of reason. He thought he could prevail without winning and apologize without losing. Nor would he have to out-argue his intellectual inferiors. He would merely question their opinions and show them their indubitable self-interest. He was in a deep sense impolitic, an economic man who knows nothing of war and hence nothing of politics. He lost his own opportunity and in doing so may have spoiled it for others.

Harvey C. Mansfield is William R. Kenan Professor of Government at Harvard University.

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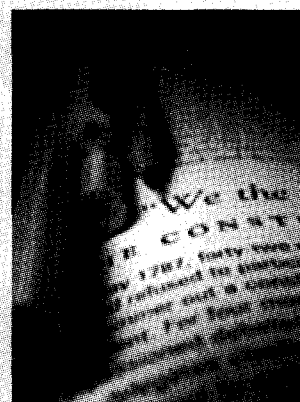
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BOOKS IN BRIEF

100 Essential Modern Poems, selected and introduced by Joseph Parisi.
Ivan R. Dee, 320 pages, \$24.95

As editor for two decades of Chicago's venerable *Poetry* magazine, Joseph Parisi spent his working hours looking for the best of contemporary poetry. His knowledge and judgment are put to good use in *100 Essential Modern Poems*, intended as a kind of *vade mecum*, a "go with me" guide to make it easier to approach the vast poetry shelves in your favorite bookstore.

The poems collected here are modern both chronologically and in the broad sense that, in Parisi's judgment, their language, ideas, forms, and sensibilities "express the spirit of modern times." They are the work of 80 poets, born between 1865 and 1952, all writing in English, about two-thirds of them American (all but a handful from east of the Mississippi). Yeats, Frost, Eliot, Auden, and Heaney are represented along with a few dozen other famous names; but there are also a couple of dozen poets whose names will not be known, or will be only vaguely known, to the educated general reader.

Parisi provides an engaging sketch of each poet's life and work. These sketches give a local habitation to the names, make informed connections among the poets and between the poems and the literary developments of their times, and include suggestions for further reading.

—Christopher Flannery



A Gift of Freedom: How the John M. Olin Foundation Changed America, by John J. Miller.
Encounter Books, 232 pages, \$25.95

The most magnificent acts of philanthropy in the United States have often reflected an old-world sense of *noblesse oblige* but with a public-spirited American twist—the Medicis as channeled by Ben Franklin, perhaps. Thus the great charitable bequests of the first-generation Rockefellers, Carnegies, and Mellons did not primarily fund art for art's sake (much less for a dynasty's sake) but endowed education, culture, and public works as means of civic self-improvement.

But what if "higher culture" and education no longer refine and uplift? And what if property rights and free enterprise, which alone can create great and widespread wealth, come under attack? In the late 1970s, this was the situation

that confronted John M. Olin, a stout and principled capitalist, who had accumulated a fortune in the ammunition business. His solution—his wonderful, highly effective solution—was the John M. Olin Foundation.

With sympathy and insight, *National Review's* John Miller tells the story of how Olin transformed his small, private foundation into a major force for shaping America's cultural and intellectual landscape. After enlarging the foundation with additional cash, Olin hired a politically savvy staff to seek out and finance a "counter intelligentsia," intended to oppose the liberal elites who had ascended in the 1960s and '70s. By 2005, when it spent itself out of existence in accord with Mr. Olin's wishes, the foundation had disbursed some \$370 million in support of conservative ideas and institutions. That's about the annual budget of Wichita—spread over more than two decades, no less. But what "a bang for the buck," to use a favorite phrase of the foundation's long-time chairman, William E. Simon.

The foundation's many beneficiaries (including the Claremont Institute) remember Olin's legacy with gratitude, and hope this book will help inspire a new generation of conservative philanthropists.

—Elihu Grant
Washington, D.C.



The Rights of War and Peace, by Hugo Grotius,
edited by Richard Tuck.
Liberty Fund, 1,350 pages, \$60 (cloth), \$36 (paper)

As a political theorist, Hugo Grotius is especially interesting for his attempt to develop a natural-law alternative to the Thomistic natural law while at the same time resisting the modern doctrine of his younger contemporary, Thomas Hobbes. Liberty Fund has now republished in three volumes Grotius's masterwork of natural and international law, *The Rights of War and Peace* (1625). This edition is a double treat, for it is a reprint of the anonymous English translation (1738) of Jean Barbeyrac's French edition (1724). The latter includes a set of notes that have come to hold nearly as much interest as Grotius's text. Since the book is so learned—some might say inclined to name-dropping—Barbeyrac's notes are especially useful. But more than editorial comments, the notes also contain a running conversation, often debate, between

Barbeyrac and Grotius. Barbeyrac, too, was extremely learned, and he brought to bear arguments from other natural-law writers, including later ones like Samuel Pufendorf. Richard Tuck of Harvard, one of the world's leading Grotius scholars, provides a brief introduction, supplying helpful context for the reader. As with all Liberty Fund editions, this is a beautiful set, selling at a generously affordable price.

—Michael Zuckert
University of Notre Dame



Politics: A Very Short Introduction,
by Kenneth Minogue.
Oxford University Press, 128 pages, \$9.95 (paper)

Both the beginner in politics and the connoisseur will benefit from Kenneth Minogue's lively contribution to the "Very Short Introduction" series published by Oxford University Press. Minogue, Professor Emeritus of Political Science at the London School of Economics, presents an engaging combination of the magisterial and the argumentative. His 13 chapters, each the length of a Saki short story, provide a historical review covering Greece, Rome, medieval Christendom, and the modern state in both its internal and international relations; an account of the practice of politics, with its characteristic interplay of parties and interests, doctrines and ideals, particular and general concerns; and a sometimes bemused, sometimes scathing discussion of attempts in the past three centuries to marry knowledge and politics, whether through modern political science, on the one hand, or ideology, on the other.

Uniting Minogue's presentation is a thoroughly classical contrast between politics and despotism. In the former, citizens shape the conditions of their own association through public deliberation and debate; in despotism, the terms of government are handed down. "Politics is endless public disagreement about what justice requires," writes Minogue. Where disagreement is suppressed, or where its elimination is desired, the result is quasi-despotic. His argument, he concludes, is "likely to provoke disagreement, perhaps even a bit of outrage. And if it does do that it will have succeeded in illustrating one more aspect of the many-sided thing we have been studying."

—Josiah Lee Auspitz
Michael Oakeshott Association



Opera: The Basics, by Denise Gallo.
Routledge, 224 pages, \$75 (cloth), \$16.95 (paper)

This short little book outweighs much of the competition. Written by a senior music specialist at the Library of Congress, Denise Gallo's *Opera: The Basics* is a cross between an opera dictionary and an encyclopedia. It defines basic terms but adds fascinating history and rich context.

This is not opera for "dummies." For instance, a page in the libretto section is devoted to "A Brief Word About German Versification." While the beginner will not be intimidated, even opera veterans will learn from it. One can dip into this volume almost anywhere and find something entertaining and instructive. I had no idea that Mozart's famous librettist, Lorenzo Da Ponte, filched most of the text for *Don Giovanni* from other sources. Or that one reason the pit was created for the opera orchestra was that patrons in the front row complained that the double basses obstructed their view.

Gallo's evident depth of learning is combined with an affection that gives the book the sense of having been written from inside the world of opera rather than by an outside observer of it. *Dulce et utile*.

—Robert R. Reilly
Vienna, VA



Right Turn: John T. Flynn and the Transformation of American Liberalism, by John E. Moser.
New York University Press, 277 pages, \$45

In this much-needed and well-researched biography, Ashland University history professor John Moser traces the long, strange career of an American journalist prominent from the 1930s to the 1950s. John T. Flynn's ability to convey complex economic issues in winning prose made him an influential voice at the onset of the Great Depression, which he blamed on corrupt, unregulated Wall Street financiers.

Initially a supporter of Franklin Roosevelt and the New Deal, Flynn later wrote two books attacking the president. He thought Roosevelt incapable of grappling with the Depression and prone, as Moser recounts, to "save his presidency by promoting war hysteria." Flynn became a founding member of America First, though he did everything he could to distance the organization from Nazi defenders and Communists. By the 1950s, he embraced Senator Joseph McCarthy, whom he thought deserved "the whole-

hearted support of every loyal American." Flynn eventually became a pariah on both the Left and the Right, and today he is remembered only by groups like the John Birch Society.

Moser argues that throughout it all, the irascible journalist remained—as he himself always claimed—a political liberal. Yet Flynn was not a classical liberal; he rejected free-market capitalism and favored business regulation. Nor was he a modern liberal; he opposed both the New Deal and the Fair Deal. If anything, Flynn was closer to the old progressives like Gerald Nye, Burton Wheeler, Gifford Pinchot, and Hiram Johnson, self-proclaimed advocates of the people against the interests. If these men had been active public figures following World War II, they may have made a "right turn" similar to Flynn's.

—Gregory L. Schneider
Emporia State University



Perfection and Disharmony in the Thought of Jean-Jacques Rousseau, by Jonathan Marks.
Cambridge University Press, 200 pages, \$65

Rousseau is notorious for elaborating two apparently contradictory accounts of human well-being: primitive, natural man (misnamed the noble savage) and the citizen (who is totally socialized or "denatured"). Most readers find both extremes impossible and undesirable. In his carefully argued book, Jonathan Marks suggests that Rousseau agrees.

Marks, a Carthage College professor of political science and philosophy, argues that what is best by nature for man according to Rousseau is a kind of balance of contradictory elements that is more productive of happiness than the bourgeois' conflicted existence—a "natural perfection of a naturally disharmonious being." He elaborates several such possibilities. In his *Discourses*, Rousseau calls the state of savage society, which has already developed far from the original state of nature, "the best state for mankind." In the *Émile*, an imaginary account of the best possible education for an ordinary man, he combines in a different way elements of individuality and independence with preparation for compassionate, dutiful participation in social life. And in *The Social Contract*, the citizens of a legitimate modern republic would likewise exemplify a balance of opposites, enjoying individual rights and spheres of activity alongside their dedication to the general will. In short, the perfection of man involves

not impossible unity but happy balance.

This assessment is thorough and exceptionally fair-minded in its discussion of other interpreters of Rousseau. Marks recovers an analysis of liberalism's problems that is more radical and yet more balanced than modern communitarian approaches. He shows that Rousseau's rhetorical extremism, being in the service of moderation, is no political vice.

—James H. Nichols, Jr.
Claremont McKenna College



Bertrand de Jouvenel: The Conservative Liberal and the Illusions of Modernity, by Daniel J. Mahoney.
ISI Books, 232 pages, \$25 (cloth), \$15 (paper)

For Daniel Mahoney, author of two celebrated works on Raymond Aron and Aleksandr Solzhenitsyn, Bertrand de Jouvenel is one of the greatest though most underappreciated political philosophers of the 20th century—a thinker in the mold, if not quite at the rank, of Alexis de Tocqueville.

Jouvenel was concerned with the danger of state power (and hence often miscast as a libertarian), but also with the need to develop conscious public and private strategies to form better citizens and to protect the natural environment. His political thought aimed in no small part at dispelling "the illusions of modernity," though without ever abandoning belief in founding a moderate and rational political science that could improve liberal democracy. The core of Jouvenel's work, according to Mahoney, is found in three "masterworks of political philosophy" written between 1945 and 1963: *On Power* (the best known of Jouvenel's books), *Sovereignty* (the most profound), and *The Pure Theory of Politics* (the most provocative).

Mahoney candidly explores Jouvenel's life—including his dalliances before World War II with both the far Left and the far Right, and his awkward efforts after 1968 to ingratiate himself again with the Left. Mahoney concludes that Jouvenel's thought deserves to be distinguished from his weaknesses, though not fatal flaws, of character: "The sympathetic student of Jouvenel is torn between profound admiration for the wise and humane political philosopher and unavoidable discomfort with the poor practical judgment he regularly displayed in the opening and closing periods of his intellectual career."

—James W. Ceaser
University of Virginia



Essay by Victor Davis Hanson

FRANCE'S IMMIGRANT PROBLEM—AND OURS

THE THREE WEEKS OF MUSLIM RAGE across France during autumn 2005 brought *Schadenfreude* to many Americans. They saw a thin scab of French hypocrisy scraped off—revealing a deep wound of invidious religious and racial separatism festering in Muslim ghettos. As during the August 2003 heat wave that killed nearly 15,000 French elderly in stifling apartments while their progeny enjoyed their state-subsidized vacation at the beach or mountains, French talk of solidarity and moral superiority proved spectacularly at odds with the facts.

So for much of last October and November, Americans congratulated themselves that French-style rioting could, of course, never happen in the United States. After all, their economy is moribund. Ours is growing at well over 3% per year. French unemployment hovers near 10%; America's is half that. Fifty-seven million jobs were created in the U.S. during the past 30 years; only 4 million in all of Europe. Our minority youth, as a result, are much more likely to be working than idling in the streets. And sure enough, in France, about 25% of youths between 15 and 24, regardless of race or religion, are out of work.

After the unrest in our cities during the 1960s and 1970s, Americans increasingly sought through assimilation, intermarriage, and integration to fulfill the ideal of an interracial society. As emblems of our success, Americans can point to cabinet members like Colin Powell, Condoleezza Rice, or Alberto Gonzalez. By contrast, it is almost unimaginable that anyone of Arab-French ancestry would head a major French ministry. We long ago jettisoned the notion that proper citizens should necessarily look like Europeans. The French apparently still have not. Second- or third-generation spokespersons of the American Hispanic community, for instance, are often successful, affluent, and integrated. By contrast, imams who barely speak French after decades of living there, and who from their 1,500 mosques decry the decadence of French culture, were often the only intermediaries between the French government and youthful rioters.

The accepted view is not just that the American melting pot differs from European separatism, but that the largest bloc of our immigrant residents is itself quite different—Christian Mexicans who trek across a

common 2,000-mile unfenced border, eagerly looking for work. France's Muslim immigrants bring with them age-old, clash-of-civilizations baggage dating from Poitiers in the 8th century to the 20th-century French colonial war in Algeria. In contrast, Mexico was colonized by European Christians—and we have had more or less stable relations with the Mexican government for over a century. Moreover, even illegal-alien drug smugglers and gangbangers are not terrorists; we do not fret about their potential sympathy for radical Islam. And the rioters outside of Paris were almost all males, apparently embracing strict gender separation—antithetical to French culture, and utterly foreign to Mexican immigrant men and women, who cross our border indistinguishably.

All's Not Well

YET SUCH CONTRASTS ARE NOT THE entire story. For despite the many differences, America is not immune from all the destructive social and cultural forces now tearing at the seams of French society. Hundreds of thousands of first-generation illegal aliens currently live in Los Angeles and rural California in what are, in effect, segregated communities. In many cases, they are no more integrated—and no less alienated—than those in the French suburbs. Instead, these immigrants comprise an entire underclass without sufficient language skills, education, or familiarity with their host country to integrate successfully into society, much less to pass on capital and expertise to ensure that their children are not condemned to perpetual menial labor.

Spanish has become the de facto language for many communities in the southwest U.S. in the same way that Arabic dominates the French suburbs. Mexico City newspapers air the same sort of historical gripes and peddle the same kind of myths as Arab fundamentalists, who drug their poor, uneducated expatriates with stories of al-Andalus and a restored caliphate that will spread once again from southern Europe to the Euphrates.

In some respects, our situation is worse than France's. The United States has some 8-12 million illegal aliens—a population of unlawful residents larger than that of any other country in the Western world—not France's 4-7 million mostly Arab-French citizens. Ten

thousand Muslim youths rioted outside Paris; but there are nearly 15,000 illegal-alien felons from Mexico in the California penal system alone, incarcerated at a cost of almost a half billion dollars a year. Portions of the Arizona and California borders have devolved into a Wild West—a no-man's-land of drug smuggling, shoot-outs, environmental desecration, and random death. Mexico responds by publishing comic books with safety tips about crossing the border, so that its departing citizens can more safely violate U.S. immigration laws. Meanwhile, Hispanic groups in America complain that increased border surveillance near San Diego has cruelly diverted human traffic into the desert.

Granted, Americans have proved far more adept at assimilating the Other than have the French; we have not suffered widespread racial or ethnic violence since the 1992 Los Angeles riots. And we do not have a religious or terrorist overtone to our internal tensions. But there are still enough similarities with the French experience to give us pause.

Immigration and Its Discontents

IN THE FIRST PLACE, POOR MEXICANS COME to the U.S. for largely the same reasons that Arabs settle in France (and both were initially welcomed by their hosts). Mexicans and Arabs alike flee corrupt Third World societies and grinding poverty. At least in the beginning, they trust that unskilled and often menial employment in the West—under the aegis of a far more liberal welfare state and the rule of law—are better than anything back home. Perhaps at first such jobs are considered an improvement. But by the second generation, the paradox becomes apparent: employers hire migrants and their children expressly on the premise that they will work for lower wages than the natives would accept. If employers were to pay competitive compensation and provide full benefits, there would be little need for immigrants, since in many counties where illegal aliens reside there are enough unemployed non-immigrants to fill such jobs. In America as in France, the society eventually must pay the difference through greater state entitlements to subsidize an (often persistent) underclass.

So the reasons that Mexicans' and Arabs' rates of poverty, alcoholism, incarceration, reli-

ance on entitlements, and high school drop-out are far higher than those of the host population are similar: in a globalized economy, manual labor in the West is now rarely unionized, respected, well-paying, or lasting. Nor are such jobs often looked upon, as they once were, as a sort of entry-level apprenticeship in which character and discipline are inculcated, in which young people gain education and experience before moving up the employment ladder.

Much of the work offered to immigrants remains in the service sector—cooking food, making beds, cutting lawns, cleaning toilets—jobs that become galling for the perennially second-class citizen in constant proximity to his more affluent host, whom he must serve while never quite receiving the compensation or respect he believes is warranted. Such jobs tend to come and go without breeding loyalty on either side. This is why the French-Arab unemployment rate (nearly 20%) is twice the national average, and why nearly one-third of California's Mexican immigrant households are on public assistance. In each case, foreigners are welcomed in due to a perceived shortage of labor, but their families eventually end up either unemployed or on public assistance at much higher rates than non-immigrant households.

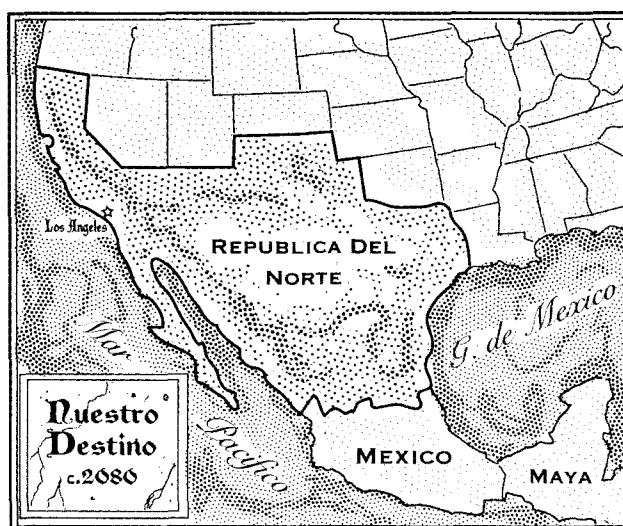
Many in the second generation lap up their parents' bitterness, but without the consolation that things are still better in the West than back home. This is one reason that nearly four out of every ten Hispanic high school students are not graduating from high school in four years. Of those that do, only 22.9% meet the minimum entry requirements of the California State University system, the less competitive of the state's two systems. Of Latinos of all statuses in California, less than 10% of those over 25 have bachelor's degrees—a legacy of their parents who in many cases came to the state without English, without education, without lawful entry, and without well-paying, secure jobs. In some sense, the anger of the tattooed gang member who ends up in San Quentin is not that different from the rage of the car-burning Muslim in the Paris suburbs. Both are resentful; have sufficient entitlement aid to indulge the appetites but insufficient skills to earn a good living; and are eager to blame society for their frustrations.

In short, the absence of fluency in the host language, little or no education beyond high school, and retention of much of their home country's culture all conspire to keep millions of unassimilated immigrants—in both France and the U.S.—stuck in ethnic enclaves and

static jobs that usually don't pay enough to ensure a middle-class existence for larger-than-average families. This is true even without the specter of prevailing racism and undeniable discrimination. And by middle age their physically demanding jobs often leave such workers injured, ill, or disabled.

The Politics of Resentment

THE PROBLEM IS NOT THAT IT IS IMPOSSIBLE for thousands of maids, street sweepers, fruit pickers, and gardeners to move up to become electricians, small contractors, and government officials, in either France or the U.S. But the pool of newly arrived young immigrants who cannot advance quickly is so large—and growing—that our failures in upward mobility overshadow our successes. In postmodern societies, the number



of immigrants is a force multiplier, inasmuch as near-instant parity for all is taken to be the only benchmark of success. Therefore the collective failure of millions is far more relevant politically than the individual success of thousands.

If Islam bolsters resistance to assimilation on the part of French immigrants from the Maghreb, illegality alienates Hispanic immigrants whose cars, taxes, and official documentation exist in a netherworld off the books. Hence many Hispanic youths—like the Arab population of France, but unlike the Cuban, Korean, or Sikh populations in the U.S.—embrace varying degrees of ethnic chauvinism to decry de facto inequality.

Consider, for example, the radical agenda of some of the most vocal ethnic separatists. The slogans of MEChA (*El Movimiento Estudiantil Chicano de Aztlán*)—"Everything for the race. Nothing for those outside the race." (*Por La Raza todo. Fuera de La Raza nada.*)—do not differ much from Islamic nationalists' sentiments in Europe.

Those embarrassed by such racist mottoes argue that ethnic triumphalists in the U.S. are ossified relics of the 1960s, and have tempered their rhetoric in the 21st century. Yet ponder the following essay from Ernesto Cienfuegos on the website *La Voz de Aztlán* ("The Voice of Aztlán") in the wake of the French rioting:

Today, here in Los Angeles, we are already seeing ominous signs of an impending social explosion that will make the French rebellion by Muslim and immigrant youths seem "tame" by comparison. All the ingredients are present including a hostile and racist police as in France. In fact, we came close to having major riots on three separate occasions just this year alone.... There is a strange feeling here in Los Angeles that something sinister is about to happen but no one knows when.

All it will take is for a "bird-brain cop" to do something stupid and all hell will break loose. If another major rebellion breaks out here in L.A. it could rapidly spread throughout the USA as it has spread in France.... The social and economic conditions that exist in France that adversely affect its immigrant and Muslim populations also exist here in the USA.... The rebellion that is occurring in France can and will most probably happen here.

The largest Hispanic grievance association is still called the National Council of La Raza ("the Race"), a well-meaning organization that nevertheless appeals to racial solidarity and purity and therefore separatism—a clear repudiation of the idea of American multiracialism. Its nomenclature would hardly be tolerated were it not for the enormous size of the growing Hispanic community.

In a 1997 speech before this activist group, former Mexican President Ernesto Zedillo bragged that "the Mexican nation extends beyond the territory enclosed by its borders" and that Mexican migrants were "an important—a very important—part of this." A Zogby poll of Mexican citizens conducted in late May 2002 showed that 58% believed that "the territory of the United States' southwest rightfully belongs to Mexico." The national newspaper of Mexico, *Excelsior*, agreed: "The American Southwest seems to be slowly returning to the jurisdiction of Mexico without firing a single shot." No wonder then that 57% of Mexicans in that same Zogby poll believed that they should have the right to cross the border freely and without U.S. permission.

In a recent Pew poll, 40% of all Mexicans expressed a desire to immigrate to the U.S. That presents an Orwellian dilemma: almost half the population of our southern neighbor wants to leave home and enter our country, while claiming that this promised land ought to be part of the very system that has made their own country uninhabitable. A parallel phenomenon exists in Europe: radical Islamists who dream of Eurabia fail to realize that, without assimilation and adoption of their hosts' culture, they would only recreate the same discontents that prompted their departure from home in the first place.

Even if we accept that some Mexican-American leaders occasionally indulge in rhetorical excesses, their appeals to notions of race and *reconquista* still echo in mainstream politics. Consider the remarks of Richard Alatorre, a

former member of the Los Angeles City Council: "They're afraid we're going to take over the governmental institutions and other institutions. They're right. We will take them over." Mario Obledo, former California State Secretary of Health, Education, and Welfare under Jerry Brown—and awarded the Presidential Medal of Freedom by Bill Clinton—once infamously remarked, "California is going to be a Hispanic state. Anyone who doesn't like it should leave." Speaking at a Latino gathering in 1995, Art Torres, then Chairman of the California Democratic Party, decried the passage of Proposition 187 denying entitlement benefits to those here illegally: "Power is not given to you. You have to take it. Remember, 187 is the last gasp of white America in California."

Such pronouncements tend to be encouraged by contemporary group-rights liberalism.

Both the French and American governments embrace multiculturalism, which exacerbates the problem and empowers racial chauvinists. Multiculturalism teaches that there is nothing really choiceworthy about the economic, social, and political core values of Western culture, given its historic sins of racism, class exploitation, and sexism. At its worst, multiculturalism can end up, as in France, allowing de facto polygamy among immigrants from North Africa (perhaps 15,000 such families), or, more mildly in the U.S., extenuating or even embracing Chicano student manifestos like this one from a MEChA website at San Jose State University:

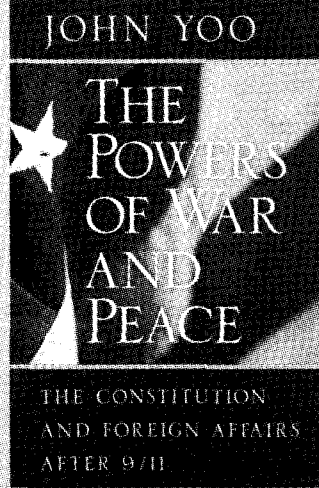
Chicanismo involves a personal decision to reject assimilation and work towards the preservation of our cultural heritage.... By all means necessary, we Chicana/Chicano estudiantes of Aztlán, dedicate ourselves to taking our educational destiny into our own hands through the process of spreading Chicanismo, in the spirit of carnalismo.... As Chicanas and Chicanos of Aztlán, we are a nationalist movement of Indigenous Gente that lay claim to the land that is ours by birthright. As a nationalist movement we seek to free our people from the exploitation of an oppressive society that occupies our land.

Second-generation immigrants often take away from this student activism, multicultural school curriculum, government bureaucracy, and popular culture a mixed but mostly pernicious message: that long-standing prejudice intrinsic to a corrupt system is what keeps newcomers down; and consequently that self-esteem and self-confidence can only be imparted by a therapeutic course of study, airing past grievances and proposing new group compensation. Shunned is the idea that traditional education alone allows immigrants to master the host language, gain familiarity with the host country's traditions and customs, and acquire enough science, math, and liberal arts to compete with long-standing natives.

The result is often psychological chaos. Too many second-generation Hispanics in the U.S., and Arabs in France, romanticize their "mother" country, which often they have never seen and would never return to if they had—while deprecating their parents' adopted society. This schizophrenia is similar to what the polls reveal about the wishes of Mexican citizens themselves. Large numbers believe that the southwest U.S. belongs to them, yet they don't want to stay in their own country. If Mexico were to absorb the American Southwest, would Mexicans still wish to emigrate there?

On the ISSUES

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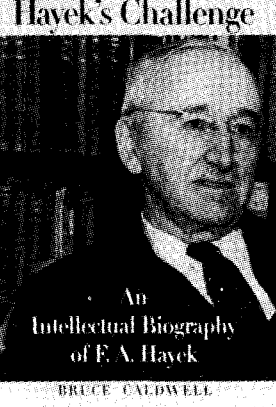


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Hard Choices

WITH MILLIONS OF ILLEGAL ALIENS already here, borders wide open in a time of war, and the ideal of assimilation under assault, there really are no more painless choices. Mexico is under no compulsion to reform its corrupt system when millions of its disaffected simply head north and send precious dollars south (some \$10-15 billion annually in worker remittances). For Mexico to change the present system would be a lose-lose proposition: more social tension at home, less money coming in from the north.

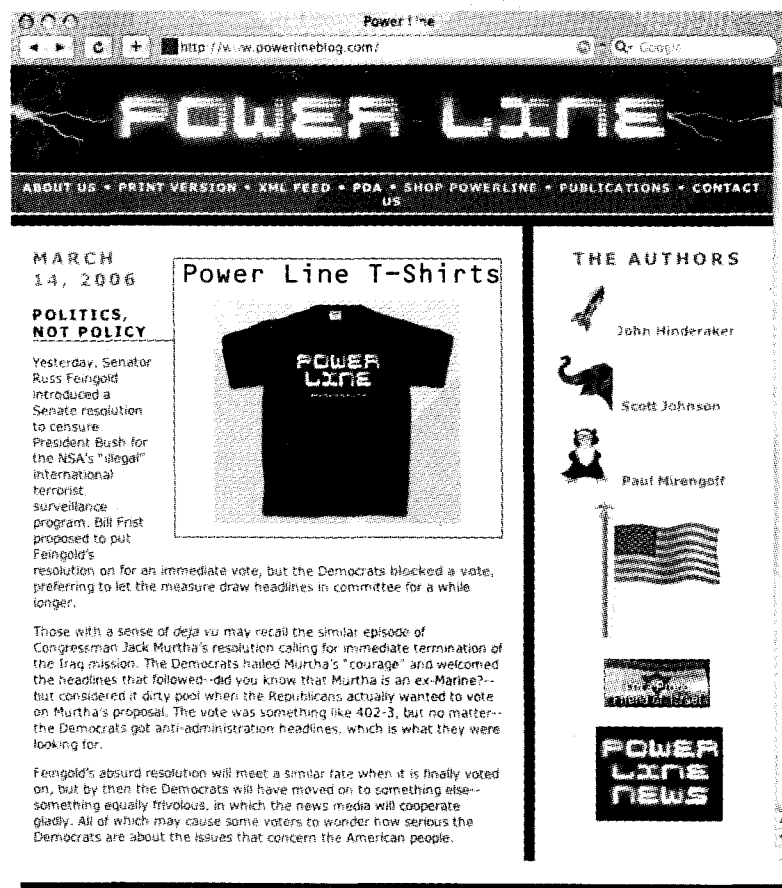
An end to cheap, industrious labor in the U.S. would cause initial hardship to the American economy, raise wages and costs, and redefine the American attitude to physical and even menial labor—positive in the long run, painful and easily demagogued in the short term. Yet because the U.S. has a far better record of assimilation than Europe, it makes no sense for us to continue to emulate European racial separatism, which offers immigrants neither the economic opportunity nor the cultural discipline to succeed.

We should start by letting in far fewer immigrants from Mexico. An allotment of about 100,000 legal entrants—reasonable people could differ on the numbers—would privilege Mexicans (in recognition of our historic ties) but still ensure that those who came would do so legally and in numbers that would mitigate their ghettoization. Rather than predicating entry into the U.S. mostly on family affiliations, we should try to use sensible criteria to assess suitable Mexican immigrants—knowledge of English, education levels, familiarity with American laws and customs—to ensure that they are competitive with other newcomers and do not perpetuate an unassimilated underclass.

Tripartite border enforcement—a permanent and systematic barrier of some sort, increased manpower for apprehension, and employer sanctions—is crucial to ensure that immigrants arrive legally and in numbers manageable for assimilation. On this the public—in a Zogby poll 68% of Americans favor stationing troops along the border to curb unlawful entry—is far ahead of either political party.

Guest workers are a bad idea, as we learned in the 1950s and '60s from our own bitter *bracero* experience (“good enough to work for you, but not good enough to live beside you”). Temporary laborers, as we see in the suburbs of Germany and other parts of Europe, will inevitably create a permanent helot class. Moreover, these workers would continually depress wages for entry-level jobs for legal immigrants

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and our own poor, who find it hard to compete with young Third World illegals who are in no position to be choosy about work or to complain to authorities about employer treatment. There is nothing in the American or European experience with guest workers to suggest that they would willingly leave when their tenure expired, that their sense of exploitation would not create and perpetuate social tension, and that they would not need welfare assistance in times of health crisis or unemployment. Nor is it clear that millions of immigrants would cease coming to the U.S. illegally when they found that they were not accorded guest worker privileges.

Amnesty is perhaps the most contentious issue in the present immigration debate—in some polls 70% of Americans oppose it. We have had six prior reprieves of various sorts since the notorious blanket amnesty of 1986. These accomplished little other than encouraging more immigrants to come across the border illegally on the logical assumption that in a few years their lawbreaking would be ignored, or rewarded with citizenship. And yet because the problem has mushroomed over four decades, there are now literally millions of Mexicans in their old age who are here illegally, have forgotten life in Mexico, and have lived essentially

as Americans. Deporting long-time residents would, if nothing else, be a humanitarian and public relations nightmare.

Yet some sort of one-time amnesty, as opposed to the old rolling and periodic reprieves, could only be discussed in the context of closing the border, precluding guest worker programs, and returning to assimilationist policies, so that the present pool of millions of illegal aliens would vanish rather than being perpetually replenished. Very rapid assimilation might work if the pool of those who come illegally, without English or education, to work largely in low-paying service jobs, would be vastly curtailed. In some sense, guest workers are far more destabilizing than a one-time amnesty. The former constantly enlarges the number of exploited and soon to be disillusioned aliens; the latter ends it. The prohibition of bilingual government documents and services, and of a racially chauvinistic and separatist curriculum in our schools and universities, would also send a powerful message that one should not come north unless he is willing to become a full-fledged American in every linguistic, cultural, and political sense of the word.

And, of course, there must be radical change in our own minds and hearts. When encouraged by Americans to adopt the customs and

language of citizens, immigrants are more easily accepted; intermarriage and integration naturally follow. We must not forget that it is far easier for a Mexican or an Arab to become part of American or French society, than it is for an expatriate African-American or European-American to be accepted as a Mexican citizen, or a Frenchman to be considered a true citizen of Islamic North Africa.

America could easily end up like France without sharing all of French society's pathologies. Alienated populations in both countries have immigrated for similar reasons. And both groups often have passed on their frustrations and disappointments to a subsequent generation who did not fully assimilate or prove competitive with the non-immigrant populace—and were allowed by their hosts to remain separate from society. Nonetheless, contrary to tendentious and inflammatory predictions, the rebellion in France is not likely to happen here. But there is no reason to tempt fate, and every reason to ameliorate our own problems before they worsen.

Victor Davis Hanson is a senior fellow in military history and classics at the Hoover Institution, and the author of Mexifornia: A State of Becoming (Encounter Books).

DISMAL SCIENCE

Freakonomics: A Rogue Economist Explores the Hidden Side of Everything,
by Steven D. Levitt and Stephen J. Dubner. HarperCollins, 256 pages, \$25.95

ACCORDING TO *FREAKONOMICS*, co-authored by University of Chicago economist Steven Levitt and freelance journalist Stephen Dubner, "economics is a science with excellent tools for gaining answers but a serious shortage of interesting questions." This book, and its authors, have become well-known for asking all kinds of interesting questions. Do real estate agents act in their clients' best interests? Why do so many drug dealers live with their mothers? Does campaign money determine election results?

Levitt and Dubner's publisher proposed the book (and since then, a magazine column, blog, audio book, T-shirts, etc.) to capitalize upon a 2003 *New York Times Magazine* article Dubner had written about Levitt. Back then, Dubner quoted Levitt as saying, "I just don't know very much about the field of economics. I'm not good at math, I don't know a lot of econometrics, and I also don't know how to do theory." But once a media maelstrom erupted over the book's assertion that legalized abortion has led to a reduction in crime, Levitt was forced to buttress the argument with his authority, telling the *New York Times*, for example, "As an economist,

I am better than the typical person at figuring out whether abortion reduces crime...." Meanwhile, the book ignored the fatal weakness in his earlier research.

That original paper, co-authored with John J. Donohue, had many flaws, as economists have pointed out ever since Levitt posted it on the internet in 1999. The paper argued that after abortion was legalized by several states starting in the late 1960s and nationwide by *Roe v. Wade* (1973), millions of fetuses were killed who, when old enough, would have been disproportionately likely to commit crimes. Abortion's culling of them should therefore have lowered crime rates. To prove this, Levitt and Donohue looked at crime rates 15-18 years after *Roe* and found the drop they had predicted. But did abortion cause it? Many economists doubt it, pointing out, for example, that teenage crime soared in the late 1980s and early 1990s, just when the abortions' effect should have manifested itself. But the paper examined only aggregate crime rates, not crime rates by age group.

Tellingly, Levitt and Donohue found their results indistinguishable whether they used

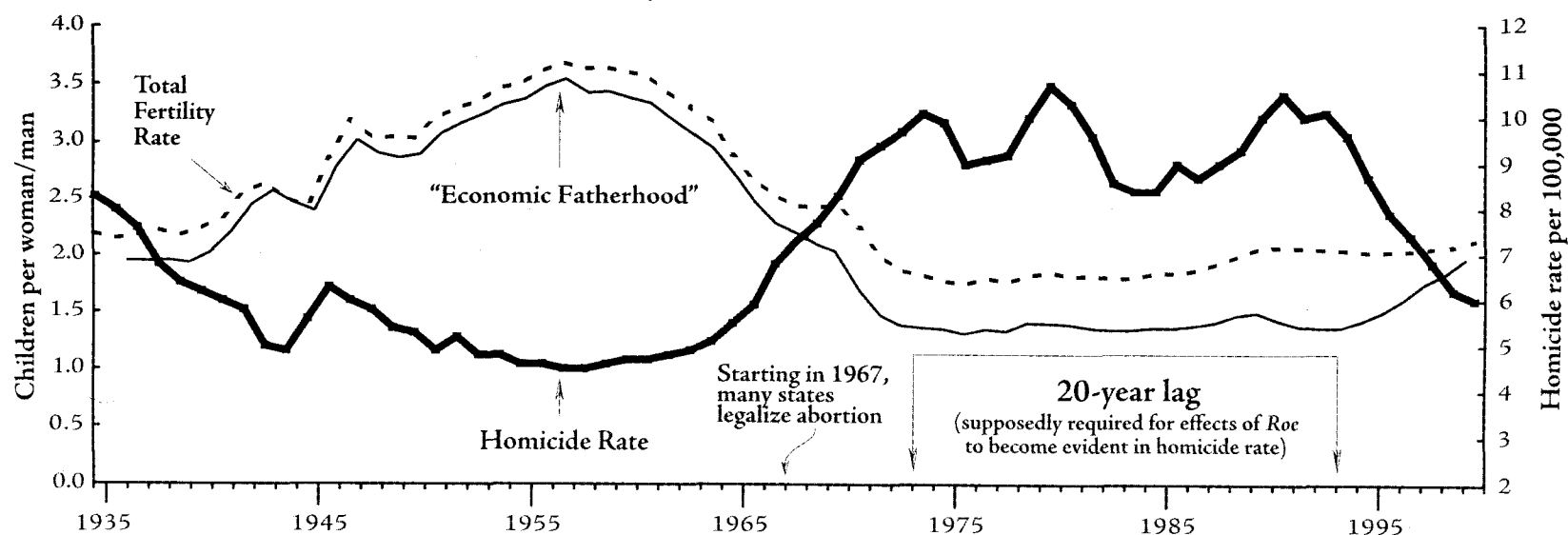
1970s or 1990s abortion rates to try to explain overall '90s crime rates. But when both were included the models went statistically haywire ("standard errors explode due to multicollinearity"). This alarm goes off when research is "misspecified," typically by omitting necessary variables. Failing to uncover any valid evidence for either a 20-year lag or for no lag, the two replaced the missing facts with an arbitrary assumption: "Consequently, it must be recognized that our interpretation of the results relies on the assumption that there will be a fifteen-to-twenty year lag before abortion materially affects crime."

THEY JUSTIFIED THEIR ASSUMPTION BY quipping that "infants commit little crime." But nearly all violent crime is committed by men (women are equal only in nonviolent crime) precisely the ages of the fathers of aborted children. In short, the missing variable is "economic fatherhood." ("Economic" fatherhood is defined not by residency with but by provision for one's children.) Including this variable not only invalidates Levitt's claim but reverses it. One can see this in a comparison of

"Economic Fatherhood" vs. Homicide

Levitt assumed fertility affects crime with a 20-year lag since "infants commit little crime." Hence, *Roe v. Wade* in 1973 supposedly reduced crime in the 1990s.

In fact, legal abortion quickly raised the homicide rate by decreasing the share of men supporting children. Crime rates fell in the 1990s mostly because of welfare reform and incarceration.



"Economic Fatherhood" = Total Fertility Rate less children on welfare and men in prison

homicide rates and economic fatherhood, the latter defined by the Total Fertility Rate for the same demographic mix as prisoners (though measured for women, it's almost exactly the same for men) minus men in prison (who cannot provide for children) and children on welfare (who aren't supported by fathers). Though strong for all categories of crime, the trade-off with economic fatherhood strengthens with the crime's violence, and is strongest for the most violent of all, homicide.

As far back as data exist, rates of economic fatherhood and homicide have been strongly, inversely "cointegrated"—a stringent statistical test characterizing inherently related events, like the number of cars entering and leaving the Lincoln Tunnel. Legalizing abortion didn't lower homicide rates 15-20 years later by eliminating infants who might, if they survived, have become murderers: it raised the homicide rate almost at once by turning their fathers back into men without dependent children—a small but steady share of whom do murder. The homicide rate rose sharply in the 1960s and '70s when expanding welfare and legal abortion sharply reduced economic fatherhood, and it dropped sharply in the '90s partly due to a recovering birth rate, but mostly because welfare reform and incarceration raised the share of men outside prison who were supporting children.

This scenario didn't occur to Levitt not because of a lack of ingenuity or data but because of the inherent weakness of the theory he was trying to apply, which Nobel Prize-winning economists George J. Stigler and Gary S. Becker, Levitt's mentor, called the "economic approach to human behavior." Levitt was unable to see the true correlation between abortion and crime because he was among the first victims of an epic change in the teaching of economics orchestrated by Stigler, with Becker's support.

FREAKONOMICS RELIES HEAVILY UPON the theory of "information asymmetry," which explains for example why a new car's value drops sharply the moment it is driven off the lot (people assume that if anyone wants to resell a new car, it must be a lemon). Levitt and Dubner warn, "Experts—from criminologists to real-estate agents—use their information to serve their own agenda." They don't mention that Stigler and Becker viewed the teaching of economics exactly the same way. Stigler's 1983 Nobel address advised his peers to consider themselves so many used-theory salesmen, whose livelihood was mortally threatened by students' knowledge that newer (or older) theories are superior:

Gary Becker has suggested that...the established scholar possesses a valuable capital asset in his command over a particular body of knowledge. That capital would be reduced if his knowledge were made obsolete by the general acceptance of a new theory. Hence, established scholars should, in their own self-interest, attack new theories, possibly even more than they do in the absence of joint action.

For Stigler, this was not hypothetical. Until the mid-1950s, he had built his reputation as an expert in the history of economics on the strength of an excellent dissertation published in 1941, which covered 19th-century theory and had proceeded on the general assumption that economics began with Adam Smith. But Joseph Schumpeter's *History of Economic Analysis*, published posthumously in 1954, demonstrated that all modern theory could be traced to the Scholastics who sifted and synthesized Biblical and Greco-Roman thought in light of Arabic and Jewish commentaries, and that "the *Wealth of Nations* does not contain a single analytic idea, principle, or method that was entirely new in 1776." This fact revolutionized the field, but slashed Stigler's relative expertise. He quickly switched from the history of economics to its modern sociology and urged others to do likewise. In a famous 1969 article he posed the question, "Does Economics Have a Useful Past?" and answered in the negative, explicitly opposing Schumpeter. In 1972, the University of Chicago's economics department approved Stigler's motion to abolish the requirement that students master its history before receiving a degree, and departments at all major universities quickly followed suit.

But Stigler was wrong in claiming "all that is useful and valid in earlier work is present—in purer and more elegant form—in the modern theory." Economics has been taught at the highest university level since about 1250, when Thomas Aquinas integrated four theories from Aristotle and Augustine into a coherent whole: production; utility, which explains consumption; exchange; and final distribution, which explains personal gifts and crimes (as well as distributive justice in the family and government). All major economic thinkers taught the scholastic outline until Adam Smith.

Smith rejected the theories of utility and final distribution in *The Theory of Moral Sentiments* (substituting his famous "invisible hand") and started classical economics with the outline chopped from four elements to two, production and exchange. The current neoclassical period began in 1870 when three economists dissatis-

fied with Smith's revision (W.S. Jevons, Carl Menger, and Leon Walras) independently rediscovered the theory of utility. Since later neoclassical economists never reinvented final distribution, today's theory contains no more than three elements—consumption, production, and exchange—and tries to explain final distribution with these three. This is why Levitt couldn't reach a statistically valid conclusion about abortion and crime: he was trying to explain four things with only three explanatory equations.

Becker earned his 1992 Nobel Prize for building on Theodore Schultz's rediscovery of Aristotle's theory of the household production of so-called "human capital." But on Stigler's advice, Becker combined it with Jeremy Bentham's incompatible notion that utility is a *thing*, a quantum of physiological pleasure that Bentham supposed is the ultimate good we all wish to consume. In Benthamite theory, all of us are selfish, sociopathic utility maximizers—freaks, as it were.

AS AUGUSTINE EXPLAINED 14 CENTURIES before Bentham, utility is not a *thing*, but a *relation*: our order of preference (first, second, third, etc.) for the goods we want to distribute among the persons (including ourselves) who are the "end" or purpose of our actions. Our fundamental preference (also first, second, third, etc.) is for these persons, and we distribute our goods proportionally to our love for others relative to ourselves. This theory explains the near-perfect trade-off between homicide and economic fatherhood. Since parents spend so much time serving their children, they have less for themselves. A small but roughly constant fraction of all adult time spent on oneself is spent harming others. Hence for a few men, the choice is literally between giving life and taking it.

Historian Henry William Spiegel remarked of the "marginal revolution," which ended classical economics and began the current neoclassical phase: "Outsiders ranked prominently among the pioneers of marginal analysis because its discovery required a perspective that the experts did not necessarily possess." This will be true in coming decades as economists who understand the "human approach to economic behavior" of Aristotle, Augustine, and Aquinas find full employment rewriting neoclassical theories of the Bentham-Becker variety.

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Essay by Harry V. Jaffa

WHO OWNS THE COPYRIGHT TO THE UNIVERSE?



IN A WALL STREET JOURNAL ESSAY, JAMES Q. Wilson praised a Pennsylvania federal judge's decision to strike down efforts of a local school board to have "intelligent design" taught, alongside evolution, as part of a science curriculum. In "Faith in Theory," appearing on December 24, 2005, Wilson wrote:

What schools should do is teach evolution emphasizing both its successes and its still unexplained limitations. Evolution, like almost every scientific theory, has some problems. But they are not the kind of problems that can be solved by assuming that an intelligent designer (whom advocates will tell you privately is God) created life. There is not a shred of evidence to support this theory, one that has been around since critics of Darwin began writing in the 19th century.

One wonders who it was that gave the federal courts jurisdiction over local school boards, to determine the curriculum of our public schools. And who gave Professor Wilson the authority to say that there is not a shred of evidence to support the idea of intelligent design in the universe. There are persons with high academic credentials—although perhaps not as high as Professor Wilson's—on both sides of this question. That the members of a school board are persuaded by those with whom a federal court, or Professor Wilson, disagrees, ought not to stigmatize them as heretics before the Inquisition of scientific orthodoxy.

Professor Wilson is behind the curve of controversy on this topic, which has raged in recent years beyond the boundaries of the 19th-cen-

tury debates—or of the absurd Scopes trial. There is, for example, nothing in Darwinian theory that excludes the possibility that natural selection is the means by which God created the species. It may be an act of faith to believe this, but it is no less an act of faith to deny it. There is therefore nothing in the logic of evolution, strictly speaking, that places it in opposition to the Bible. Hence there never was any compelling reason for Biblical fundamentalists to oppose the teaching of evolution; nor is there reason now for Darwinian fundamentalists to oppose the teaching of intelligent design.

While there is nothing in the theory of evolution that contradicts the proposition that this is how God created, there is also nothing in the theory of intelligent design—many intelligent design advocates to the contrary, notwithstanding—which necessarily implies a designer. Aristotle says that whatever can come to be by art—that is, by intelligent design—can also come to be by chance—that is, without an artisan or designer. Evolution is an account of how species were formed by actions or events that did not intend to form the species. But the role of chance in the coming-to-be of species by no means excludes the possibility that what came to be was an intelligent end or purpose. Aristotle says that he went into the market to buy a cabbage, and there he met a man who owed him money. The meeting was the result of chance, but that meeting fulfilled an intelligent purpose, namely, reclaiming the money that was owed. Where there is no intelligent purpose there is no chance. Without knowing what purposive action is, we could not recognize non-purposive or chance occurrences. The idea of chance—and hence the

idea of evolution—is linked inexorably to the idea of purpose.

The process of evolution may have been governed by chance, but the emergence of the human species resulted in an intelligent, and intelligently purposeful, being. The difficulty faced by those claiming exclusive sovereignty for what they consider the method of science in the curricula of our schools is that they fail to realize how limited is the understanding aimed at or achieved by this method. The Darwinian evolutionists assume that the human species, like all living beings, emerged from the struggle for survival merely for survival's sake. That is, the species that survived were better adapted for survival but, from the point of view of evolution alone, for nothing more. But humans often sacrifice their lives for something they think more important than survival. Belonging to the human species means precisely to be endowed with purpose or purposes distinct from what may be attributed to adaptation in the process of Darwinian evolution.

NAZISM IS ONE OF SEVERAL EXAMPLES of creeds that attempted to reduce all human morality to whatever led to success in the struggle for survival. In the case of the Nazis this meant victory in war. They were defeated, however, by those they had believed were genetically inferior. But no sane person believes that the outcome of World War II proved that anyone was genetically superior or inferior to anyone else. Some of us believe—rightly I would contend—that constitutional democracy is morally superior to tyranny, and that it deserved to prevail. But, as Churchill observed, in war it is not possible to guarantee success; it



is possible only to deserve it. We must be prepared to recognize that sometimes the undeserving succeed, and the deserving fail. But it is never better to be undeserving than deserving. It is never better to be a successful tyrant than a failed enemy of tyranny. Noble failure ought to be preferred to vulgar success. What constitutes the human good, or human goods, is not a matter of chance, however much the outcome of human action is subject to chance. What constitutes the human good cannot be discovered, or determined, by any examination of the evolutionary process. What made the cause of Churchill better than the cause of Hitler is a conclusion derived from experiences altogether different from anything experienced by subhuman, or prehuman, organisms engaged in the struggle for survival.

Besides, the theoretical activity involved in Darwin's attempt to understand the origin of species cannot itself be understood, or justified, as an outcome of an evolutionary struggle. Darwinism belongs to that sphere of human activity—of which modern science is a part, but only a part—which attempts to discover what we are, why we are, and how we can fulfill a destiny directed to something other than mere survival. The fitness of those who represent the survival of the fittest is acquired in a merely physical struggle in a physical environment bounded by sensible reality.

We are, however, a species, the only earthly species, that can live outside the boundaries of the experience that is accessible only by sense perception. We can become invisible guests in the house of Cephalus, more than 2,000 years ago, silently listening to the discourse of

Socrates. We can visit the dusty plains of Illinois, in the summer of 1858, as Lincoln repeats against Douglas some of the same arguments that Socrates used against Thrasymachus. Douglas's justification of slavery was only a version of Thrasymachus's (Darwinian) definition of justice as nothing but the interest of the stronger.

WE CANNOT LISTEN TO THE REMOTE future, but it is essential to our well-being here and now to leave a record of our thoughts and actions for the contemplation of the unborn. Our Constitution is dedicated to securing the blessings of liberty not only for ourselves but for our posterity. We belong to that great chain of being that links past and future. We hope that posterity will learn from both our errors and our achievements. No man or woman lives only in a time and place circumscribed by an immediate physical reality. Even the least sophisticated among us, reading a trashy novel, is uniquely human in living outside of his or her self. If there is truth in Darwinian doctrine, it must be seen by acknowledging the higher ends served by man's humanity as the ultimate ends of the evolutionary process. Darwin's own career cannot be explained as resulting from adaptation for survival: he thought natural selection *true*, not simply advantageous to his own reproductive success. Nor can his espousal of such causes as the abolition of slavery be reduced to an evolutionary strategem. This is all the more remarkable in that, in opposition to Darwin and in a prologue to Hitlerism, Darwinism in the 19th century furnished a most powerful defense of slavery. It

was held to be a scientific truth that Negroes as a race had not evolved as far as whites, and that it was in their interest (as it was of dogs or horses) to be enslaved by a superior species. Alexander Stephens's "Cornerstone" speech (March 21, 1861) defended the newly independent Confederate States of America as the first government founded upon the newly discovered scientific truth that the Negroes were an inferior race.

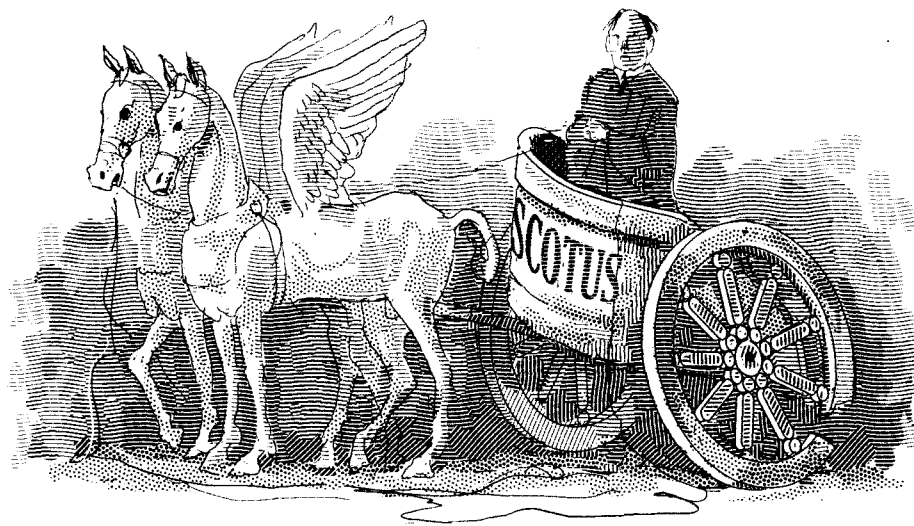
We are reminded that in the Creation story in Genesis, after God had finished, he said that the work He had done was "very good." But not even God can look upon a work as good without having had a previous idea of what constitutes goodness. The idea of goodness—what Plato called the idea of the good—must pre-exist any work to be called good. To call a work good, whether the work be by God, or man, or chance, implies a pre-existing design. But the design, in itself, is independent of the designer. How the world came to be may be a mystery. That man is a rational being is a fact which we take as a starting point. If this fact is seen as the end or purpose of the evolutionary process, then we must conclude that the stages of the evolutionary process were means leading to this end. We must conclude that evolution in itself is an account of the accomplishment of a grand design.

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Essay by Richard E. Morgan

THE FAILURE OF THE REHNQUIST COURT



WITH THE CHIEF JUSTICE'S DEATH last September, the book was closed on the Rehnquist Court. Politically and jurisprudentially, however, the book had slammed shut long before. In 1986, when William H. Rehnquist was confirmed as chief justice (and Antonin Scalia succeeded to the associate justiceship Rehnquist had vacated), American conservatives, then politically resurgent, had great expectations that the Supreme Court's excesses of the past several decades would be reversed or at least substantially moderated. But though Rehnquist would preside over the Court for almost two decades, the window of opportunity for fundamental change in American constitutional law closed within six years of his confirmation.

In fact, the end of the Rehnquist Court's high promise may be precisely dated—June 29, 1992. On that day the long-awaited decision in *Planned Parenthood v. Casey* was handed down, explicitly reaffirming the core holding of *Roe v. Wade*: that inherent in the word "liberty" in the 14th Amendment's due process clause was a constitutional right for women to terminate their pregnancies by abortion. With this decision, the conservative constitutional insurgency mounted in the 1980s ended in a virtual rout.

The final blow of the abortion case had been telegraphed several days before in another 5-4 decision, *Lee v. Weisman*, in which the majority disallowed a nonsectarian invocation and benediction at a school commencement ceremony, and reaffirmed the misshapen establishment-

clause jurisprudence that had emerged from school prayer decisions 30 years before. Reporting the commencement prayer decision, the *New York Times* joyfully announced the formation of a "moderate" bloc on the Court consisting of Justices Sandra Day O'Connor, Anthony Kennedy, and David Souter. Indeed, the *Time's* front page was able to run the same three pictures the day after *Casey* that it had used the preceding Friday. The importance of this spring '92 alignment can hardly be overstated. During the summer, many conservatives continued to dream about being only one vote away. President George H. W. Bush would be reelected, Justice Harry Blackmun would retire in despair, and then finally, on what would be the sixth conservative try since 1981 (the *elevanth* since Richard Nixon took office in 1969) a stable, controlling conservative majority would be installed on the Court. But a beaten and intellectually rudderless Bush left Washington in January, and Bill Clinton took office pledged to nominate "world class" progressives to the federal bench. In the spring of 1993 Justice Byron White, one of the four dissenters in both *Casey* and *Weisman*, announced his retirement and conservatives consoled themselves by observing that White's replacement, Ruth Bader Ginsburg, was not as bad a choice as President Clinton *might* have made. On April 6, 1994, Justice Blackmun announced, finally, his intention to step down—but hardly in despair. He went full of honors, celebrated as a hero of American constitutional development.

The Counterrevolution That Wasn't

TO UNDERSTAND JUST HOW LITTLE WAS accomplished in the Rehnquist years, we have only to recall the breathtaking innovations of the Warren and Burger Courts. Today left-wingers chatter about "respect for precedent" and float notions such as "super precedents," conveniently forgetting that the decisions and doctrines they seek to protect were largely created during the Warren and Burger years (when the baleful influence of Justice William Brennan was at its height). These decisions and doctrines came about through the wholesale slaughter of existing precedents and jurisprudential principles of longer standing and deeper rooting in our legal culture than those now proclaimed sacred.

Most of these initiatives had to do with constitutional construction, but some involved matters of statutory interpretation. A few had wispy intellectual roots that ran back to the 1940s and beyond, but most were cut from whole cloth after 1960. Chief among these was the careless extension of free speech protection to utterance and conduct that were historically regulated under the police power of the states and were of little or no communicative significance. There was also the gutting of the 1964 Civil Rights Act's "no discrimination" provisions; and the relentlessly secularist and historically unjustified separation of religion from the public order. These Courts discovered unenumerated and previously unimagined "fun-

damental rights" in the 14th Amendment's due process and equal protection clauses. Moreover, they thoughtlessly created new procedural rights and requirements in the area of criminal justice, and disregarded the cardinal constitutional principle of federalism.

Admittedly, the late 1980s and early 1990s saw a few small gains in the area of criminal justice. In the others, failure was complete. All the important points were reargued and conservatives lost—with the margins of defeat provided by Reagan and Bush appointees.

But what about the later '90s? Didn't the counterrevolution come, but just a little late? As early as the conclusion of the 1994-1995 term, Linda Greenhouse, the *New York Times's* veteran Supreme Court reporter, was arguing that the "moderate" bloc of Casey had broken down, with the Court's center of gravity shifting to the right. On July 6, 1995, a *Times* editorial portentously referred to "a court running in the wrong direction." That same month, Jeffrey Rosen, the able Court-watcher for *The New Republic*, wrote that the conservative justices "think they have finally exorcised the ghost of the Warren Court, [and] fulfilled the goals of the conservative judicial revolution." And again, after the closing of the Court's 1995-1996 term, there was much grumbling on the left about the conservative justices committed to returning constitutional law to the dark ages.

Unhappily, all this was wildly overstated. To the extent that there was any fundamental change on the Court in the late 1990s it had to do with Justice David Souter's steady drift to the left. Not since Harry Blackmun's metamorphosis from Chief Justice Burger's "Minnesota twin" to being the darling of elite law schools, has there been an intra-Court development as dramatic. Indeed, just as Justice Blackmun's shift was initially heralded by an adulatory article in the *New York Times Magazine*, so a piece appeared there in September 1994 celebrating Souter's growing judicial maturity. As for Justices Kennedy and O'Connor, what Greenhouse and others mistook for a turn to the right was nothing more than a continuation of the essentially unprincipled balancing act that has been their distinctive judicial style. What looked to the Left to be impressive conservative victories were a few marginal adjustments. Just consider what has happened in the last 15 years in six crucial, battleground issues of constitutional law.

Speech

Here we need look no further than the fate of the 1996 Communications Decency Act. The Court was presented with a perfect op-

portunity to undo (at least partially) one of the great mistakes of the Warren era—the painfully restrictive definition of "obscenity" put in place by *Roth v. United States* in 1957, and modified only slightly by the Burger Court in 1973. In proposing to protect minors on the internet, Congress availed itself of two new general rubrics: "indecent," and "patently offensive." If these could be employed (without the necessity of an elaborate "finding of obscenity") then at least the federal government—at least with respect to the new technology of the net—would have enjoyed some pre-1957 flexibility in regulating smut. Instead, Justice Stevens's Opinion of the Court reiterated the by-then-familiar sweeping free speech libertarianism, and held that the restrictions intended to protect children might have the impermissible effect of depriving adults of their constitutionally protected access to pornography.

Civil Rights

As to the Civil Rights Act itself, there was no indication of readiness to undo the damage done by William Brennan's 1979 opinion in *United Steelworkers of America v. Weber*, where racial preferences were held not to violate the act's "no discrimination" command. It is true that a slim majority (typical of the Rehnquist Court) made a move toward limiting race-conscious public policies under the 14th Amendment. The problem is that the amendment, fairly constructed, does not command colorblind public policy while the Civil Rights Act does. In cases such as *Adarand Constructors, Inc., v. Peña* (1995) and *Shaw v. Reno* (1993), the majority reached morally admirable results without any basis in the originalist interpretive approach to which it was supposedly committed. In other words, the conservative majority was willing to undo earlier activism (the judicial and bureaucratic corruption of the Civil Rights Act into an instrument of result-oriented "affirmative action"), prompting it to a little activism of its own—advancing the myth of an almost colorblind 14th Amendment, then refusing to follow through even on this, and collapsing in the embarrassing muddle created in 2003 by Justice O'Connor in *Gutter v. Bollinger* and *Gratz v. Bollinger* (involving racial preference in admission at the University of Michigan law school, and at its undergraduate college).

Establishment Clause

This area is often cited by those who believe the Rehnquist Court reversed Warren-and-Burger-era doctrine. A number of cases are

typically offered as examples, but three tell the story, such as it is. The first is 1997's *Agostini v. Felton*, which did actually brush aside William Brennan's earlier opinion that forbade publicly paid teachers of remedial reading from going onto parochial school premises. But although Justice O'Connor's *Agostini* opinion is a step back from the high-water mark of separation, it is only a baby step. Along with the Court liberals (Stevens, Ginsburg, Breyer, and Souter), O'Connor remained firmly committed to strict separationism. All we have in *Agostini* is a nuanced disagreement between O'Connor and the liberals as to how the "test" for strict separation should be applied.

A second case could have resulted in real change except, again, for O'Connor. Justice Clarence Thomas produced an opinion in *Mitchell v. Helms* (2000) charting a new approach to establishment clause challenges involving church-related schools: as long as the aid program was "neutral" (available to public and private, secular and church-affiliated), and as long as what was provided was secular in nature, there would be no constitutional problem. This was elegant and sensible, but O'Connor refused to join it, depriving it of majority support. Instead she concurred only in the result (upholding the challenged program), and taking Thomas to task for ignoring various strict separationist "tests" and distinctions in a fashion "in tension with our precedents."

The third case, and the most famous, is 2002's *Zelman v. Simmons-Harris*, upholding the Cleveland school voucher program. The "big news" was that tuition vouchers used at church-related schools were upheld, but Chief Justice Rehnquist's Opinion of the Court (divided 5-4) broke no new doctrinal ground, and once again there was a subversive O'Connor concurrence, denying that the decision "marks a dramatic break from the past."

She was right. The pattern is one of small course corrections combined with a refusal to confront and correct fundamental doctrinal mistakes dating from the Warren years.

Unenumerated Fundamental Rights

Nothing has happened in the years since *Casey* to reopen the question of the legitimacy of the Court's discovering unenumerated fundamental rights in the 14th Amendment. In fact, the doctrine of autonomy for "intimate" choices has been quietly expanded. Granted, in its 1997 decision in *Washington v. Glucksberg*, the Court declined invitations from the second and the ninth circuits to create a right to assisted suicide. Largely unnoticed, however, was the extent to which the various opinions expanded

the constitutional right to die (which had been tentatively advanced in the *Cruzan* case seven years earlier) and hinted powerfully that this "right" included access to painkillers that might hasten death. As Justice Scalia later quipped: "We're not quite ready to announce a right to assisted suicide—check back with us."

Criminal Procedure

The modest rollback of Warren Court activism in the area of criminal justice achieved in the 1980s did not continue into the 1990s. There was nothing, for instance, to match even the limited exception to the Fourth Amendment's exclusionary rule that was carved out in 1984. Indeed, the Court in recent years has arguably *added* to the expense and difficulty of criminal trials by crafting demanding new equal protection rules for the selection of juries. An effort to limit access to habeas corpus (which had swelled to elephantine proportions in the '60s and '70s) appears to continue, but this hardly amounts to a heroic readjustment of the rights revolution in the area of criminal justice. And most tellingly, in 2000, the Court, speaking through William Rehnquist, declined a golden opportunity presented by the fourth circuit to restrict the sweep of that most controversial of Warren Era criminal justice decisions, *Miranda v. Arizona*.

Federalism

This is an area in which the Rehnquist Court in the 1990s signaled the possibility of significant change, but what was accomplished was (in Robert Nagel's phrase) more a suggestion than a revolution. The 1995 *Lopez* decision has gotten the most attention, but despite the similar outcome in 2000's *U.S. v. Morrison*, its durability and longer-term implications remain to be seen. The core of the chief justice's opinion—that when Congress regulates non-economic activity under the commerce power it must make a colorable case for the effect on interstate commerce—was laudable. But Justices Kennedy and O'Connor were at pains to distance themselves from Rehnquist's opinion, suggesting that no real change was being made in commerce-clause doctrine. It is also worth noting that the Gun-Free School Zones Act has been reenacted with a commerce rationale precisely along the lines suggested by Justice Breyer in his *Lopez* dissent. It is only when we have a majority consistently prepared to disallow such tenuous connections to interstate commerce that we can confidently state the *Lopez* case amounts to anything. And, sad to say, the chief lost his last commerce-clause case,

Gonzales v. Raich, in 2005, when the Court, in an opinion by Justice Stevens, found the commerce power broad enough to authorize the federal government to shut down California's medical marijuana experiment.

It is true that cases in 1992 and 1997 did reinforce the principle that Congress may not commandeer states and state officials as enforcers of its laws. It is also true that decisions in the past few terms limiting the power of Congress to create private causes of action by individuals against state governments vindicated an important component of federalism (the integrity of the states as constitutionally sovereign entities). But the bottom-line judgment must be that the prospects for a reinvigorated federalism looked only marginally better in 2005 than in 1986.

Activism Unbound

HOWEVER, WHAT FINALLY DESTROYS and mocks any claim that the Rehnquist Court moved constitutional law in a seriously conservative direction is the events of 2003. The Supreme Court's decision in *Lawrence v. Texas* in June, followed closely by the decision in Massachusetts's *Goodridge v. Department of Public Health* in November, has precipitated a full-blown constitutional crisis.

For a decade before *Goodridge*, several state high courts had been sniffing hungrily around the subject of gay marriage, experimenting with variously implausible state constitutional arguments. Judges in Alaska and Hawaii, for instance, were driven off by constitutional amendments, and at the federal level congressional pressure forced President Clinton in 1996 to sign the Defense of Marriage Act (DOMA), which provided that no state had to recognize an out-of-state gay marriage. But Anthony Kennedy's opinion in *Lawrence* altered the landscape of constitutional politics dramatically.

Kennedy struck down the Texas prohibition on homosexual sodomy citing the 14th Amendment's due process clause, gratuitously overruling *Bowers v. Hardwick* (1986), a precedent of 17 years standing and perhaps the one genuine example of judicial modesty displayed by the Court in the 1980s. According to Kennedy, Justice White, the author of the *Bowers* opinion, had made a terrible mistake by asking whether there was a fundamental unenumerated right to engage in consensual homosexual sodomy. White had concluded, quite properly, that only if the Court were willing to affirm such a fundamental right could it invalidate the Georgia statute; this was fully consistent with the Court's doctrine of substantive due process developed up to that time. Justice

Kennedy, to the contrary, held that the question was not whether a fundamental right to homosexual sodomy existed but whether there was a realm of intimate sexual association protected by the 14th Amendment, a realm that could be subjected to government regulation only if that regulation had a rational basis. This was ridiculous on its face. The notion that stating a "right" at a meaningless high level of abstraction obviates affirming a right to the specific behavior at issue is simply escapist. And after concluding that the proper test for the Texas statute was "rational basis," Kennedy found that there was none! In dissent Justice Scalia warned that Kennedy's radically broad, brash opinion would open the door to same-sex marriage. This was quickly borne out in *Goodridge*.

Writing for the Supreme Judicial Court of Massachusetts, Chief Justice Margaret Marshall relied on the equal protection clause of the Massachusetts Constitution, but her approach was structurally identical to Kennedy's in *Lawrence*, on which she heavily relied. Despite 200 years of history, the disagreement of the governor, opposition by majorities in the state legislature and by a healthy majority of the citizens of the commonwealth, Marshall simply declared that there was no rational basis for restricting marriage licenses to couples of opposite sexes.

In the following November's electoral cycle, eleven states, reacting to events in Massachusetts, either altered their state constitutions to protect traditional marriage or adopted baby DOMAs, statutes with the same aim. And George W. Bush moved, albeit hesitantly, to endorse the idea of a national constitutional amendment restricting marriage to men and women.

Our Constitutional Crisis

WILL THE JUDGES BE DETERRED BY all of this? Of course not. Meet Judge Doris Ling-Cohan of New York County (that's Manhattan to the rest of us). On February 4th last year, she delivered herself of a 50-page opinion in the case of *Hernandez v. Robles*, holding that in New York City, under the due process clause of the New York Constitution, the city must issue marriage licenses to same-sex couples. Following Kennedy in *Lawrence*, and Marshall in *Goodridge* (both extensively cited), Ling-Cohan held that existing New York law flunked the rational basis test. Her opinion is much more cleanly and powerfully written than either Kennedy's effort in *Lawrence* or Margaret Marshall's clotted prose in *Goodridge*. While for the moment Ling-Cohan stands reversed by New York's

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—Michael Barone, *US News & World Report*

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intermediate-level appeals court, other judges around the country are also beginning to feed on *Goodridge* and *Lawrence*. Last March, Judge Richard A. Kramer of San Francisco County Superior Court, held that California's equal protection clause mandated same-sex unions, despite the fact that his state Supreme Court was then wrestling with that very question.

But even now the depth of our constitutional crisis is not fully understood. Gay marriage is a public policy choice of major consequence, which the judges (or at least the more adventurous judges) are determined to preempt and arrogate to themselves. This is serious, but the nature of the arguments on which the courts are now proceeding, the propositions now being advanced as what "the law" is, have truly deadly implications for the future of constitutional government in America.

For what the judges are doing, from Justice Kennedy on the Supreme Court, through Margaret Marshall in Massachusetts, to Richard Kramer in San Francisco, is liberating themselves from the cumbersome and (at least potentially) limiting doctrines that in the past were advanced to justify striking down legislation on the basis of unenumerated constitutional rights. Under these prior understandings, in order to strike, the judge had to arm himself with the doctrinal weapon of "strict scrutiny"; only then could he insist that a "compelling interest" was necessary to justify the governmental regulation, and that the means chosen to advance such an interest must be "narrowly tailored" to its accomplishment. To get to strict scrutiny it was first necessary to find either that a fundamental constitutional right existed, rooted in our history, or that the law trenched upon the interest of some "suspect class." Only from the plateau of strict scrutiny could the courts preempt public policy decisions. Absent that, the routine 14th Amendment test was "rational basis," and as generations of constitutional law students have been taught, this is an easily satisfied threshold requirement for constitutionality—the minimal constitutional hurdle which any law must clear. In one early formulation: "If any state of facts can reasonably be conceived that would sustain [the law], the existence of that state of facts at the time the law was enacted must be assumed." But now the whole grammar of 14th Amendment strict scrutiny analysis appears to have been abandoned. In its place the judges, following Kennedy, make no arguments themselves and simply stigmatize all arguments put forward to justify a law as "irrational." Doctrinally it is scandalous, but rhetorically it is quite brilliant.

First, *all* government action is equally subject to rational basis, and second, what is ra-

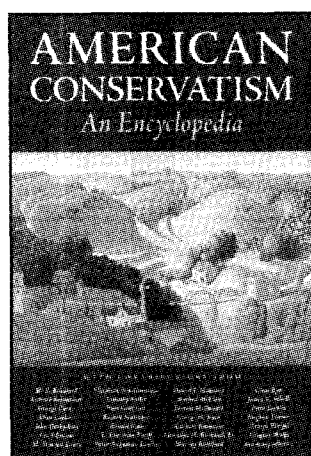
tional is now strictly in the eye of the judicial beholder. And one thing that we have been taught clearly by Kennedy, Marshall, and the others is that a *moral* justification for legislation can never constitute a rational basis. (Morality is now consigned, in constitutional law, to the realm of the "irrational.") No matter that the classic formulation of state police power has always been "power to protect the health, safety, welfare, and morals of the citizens." No matter that up until a few years ago an assertion by a judge that government in America may never regulate behavior based on moral disapprobation would have been laughed out of both courts and classrooms. In fact, Justice Kennedy first floated that notion in *Romer v. Evans* back in 1996, and while he had been very cagey in his statement of the proposition in *Romer*, by *Lawrence* it was out of the closet, and is now quite explicit in the writings of Marshall, Ling-Cohan, and Kramer. The operational effect of abandoning strict scrutiny for a new, bionic version of rational basis is that now judges need argue nothing themselves; they simply react to arguments made by defenders of governmental action and decide whether these arguments strike them as persuasive or not.

Getting the Nominations Right

ONE OF THIS, OF COURSE, IS THE late chief justice's fault. In his years as a frequent dissenting voice from 1972 to 1986, he often presented intellectually compelling alternatives to mistaken paths along which post-Warren majorities continued to plod. His 1985 dissent in *Wallace v. Jaffree*, for instance, effectively undermined the spurious historical foundation on which the liberals' strict-separationist jurisprudence rested. And in his almost 20 years in the center seat he worked assiduously to build conservative majorities, waivering only in a few instances, such as *United States v. Dickerson* (1999), where his growing attachment to judicial supremacy led him to uphold *Miranda* warnings.

No, the blame belongs mainly to the presidents who nominated the Rehnquist Court's wavering justices, beginning with Ronald Reagan, who mortgaged his first Supreme Court nomination for electoral advantage in 1980, without giving thought to who "a woman" might be. In the event, he resorted to an obscure new judge (and former state legislator) on the Arizona intermediate appellate bench, with a vaguely pro-life reputation. Although he recovered with his choice of Antonin Scalia a year later, he failed to respond vigorously to the attack on Robert Bork; and then, shocked by Bork's defeat and embarrassed by the implo-

Landmark Works for Conservatives.



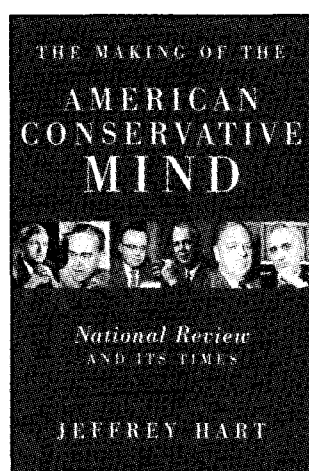
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sion of Douglas Ginsburg's short-lived nomination, he hurriedly put forward the insufficiently vetted Anthony Kennedy. Above all, however, blame for the Rehnquist Court's failings rests with George Herbert Walker Bush. Although he can take credit for the superb choice of Clarence Thomas, he was initially unwilling to engage Senate Democrats energized by their Bork victory, and in 1990 made the ultimate stealth nomination of David Souter ("John Sununu says he's sound"). Almost literally nothing was known about him; they didn't ask and he didn't tell, and a Republican president replaced William Brennan with a Brennan clone.

George W. Bush, of course, has done much better, and we move now into the Roberts/Alito era. Conservatives have more reason to hope for reform in constitutional law than at any time since June 1992. The president has made two splendid nominations, but three is really the charm. Make no mistake: on most

issues the other side is still winning and could possibly win big on the issue of gay marriage. Overwhelmingly, the legal academy (a.k.a. "The Mainstream") still belongs to the "living constitutionalists." And although conservative constitutionalists are deeper intellectually and tougher politically than they were 20 years ago, things looked good in 1986, too.

We will all do well to remember that constitutional discourse today is a kind of forensic performing art carried on before a tiny and very select audience. By its applause or invective, that audience is used to exercising a powerful influence over who wins and who loses, and this audience is almost monolithically liberal. Girded in the armor of self-righteousness, and operating on the basis of a "progressive" political-moral orthodoxy unchallenged until recently, the con-law establishment is supremely ruthless with no sense of being so. The interweaving of two institutions, the law school (especially the

great national law schools) and the judicial clerkship, has created a closed little society Don Corleone might envy. It would take a long book, and the skills of an old-time Kremlinologist, to map all the interconnections between schools (and their publications), clerks, and judges. Of course, Roberts and Alito know this; it is their own world after all. And they must also know that to the extent they attempt to nudge constitutional law back toward more traditional, respectable contours, their portion from their peers will vary from contemptuous dismissal to outright vilification. They will know, in fact, that a favorable mention in the *Harvard Law Review* or the *New York Times* will signal the need for searching self-examination.

Good luck, gentlemen.

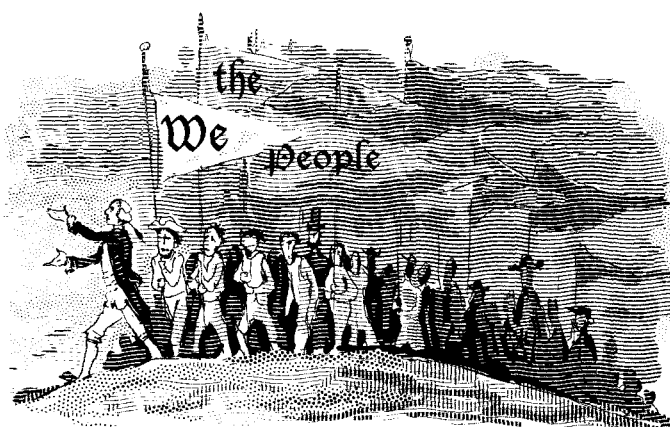
Richard E. Morgan is the William Nelson Cromwell Professor of Constitutional and International Law and Government at Bowdoin College.



Book Review by Eric R. Claeys

TAKING THE CONSTITUTION SERIOUSLY

The Heritage Guide to the Constitution, edited by Edwin Meese III, Matthew Spalding, and David Forte.
Regnery Publishing, 491 pages, \$35



THE "ORIGINALISM MOVEMENT" IS ONE of the major developments in American law in the past generation. In 1982, law students at Yale University and the University of Chicago established the Federalist Society, whose mission statement paraphrases John Marshall's axiom, inherited from Publius, that "it is emphatically the province and duty of the judiciary to say what the law is, not what it should be." In 1985, President Ronald Reagan and Attorney General Edwin Meese launched a controversial public campaign to recover respectability for the original meaning of the Constitution, as opposed to the prevailing policy-oriented approaches to constitutional interpretation.

Despite remarkable successes, the originalism movement has disappointed its votaries in some respects—particularly in its failure to change contemporary constitutional law. But it is too soon for originalists to lose heart. Progressive political scientists and New Deal lawyers took two generations to develop the constitutional law they needed to lend respectability to the centralized regulatory state. Mid-20th-century cultural liberals took a generation to convince the Supreme Court to use the "living Constitution" to revolutionize the laws of free speech, religion, and sexual privacy. Originalists should measure their successes and failures not in years, but in decades.

The Heritage Guide to the Constitution, assembled and edited by Heritage Foundation officers Edwin Meese and Matthew Spalding and Cleveland State University law professor David Forte, casts important light on the originalism movement as it enters its second generation. Quite simply, the *Heritage Guide* is

an invaluable handbook for citizens, lawyers, and scholars. This collection is the first systematic attempt by contemporary originalists to explain how they read the Constitution, front to back. There has long been a need for a one-volume book explaining how our country would be governed if officials followed the Constitution's original meaning. In the thoroughness of its clause-by-clause analysis and in its fidelity to original meaning, the *Heritage Guide* is the best commentary on the Constitution in at least a century.

As one might expect, these essays are decidedly partisan, but in the most public-spirited sense of the term. In his introduction, David Forte describes the vision of the rule of law, constitutionalism, and the common good that unites most contemporary originalists: "Written constitutionalism," he begins,

implies that those who make, interpret, and enforce the law ought to be guided by the meaning of the United States Constitution—the supreme law of the land—as it was originally written. This view came to be seriously eroded over the course of the last century with the rise of the theory of the Constitution as a 'living document' with no fixed meaning.

Original-meaning constitutionalism, according to Forte, prevents the people's passions from overwhelming their reason; it secures and enlarges human freedom; limits government; limits judicial policy-making; comports with the original understanding of what the Constitution was supposed to be; and is not as result-oriented as non-originalist approaches.

Now, some will raise hard but fair questions about where originalists' loyalties should lie when these attachments contradict each other, and others will disagree with Forte when he suggests that "the attempt to build a coherent nonoriginalist justification of Supreme Court decisions...seems to have failed." Nevertheless, his introduction nicely expresses the cogency of basic originalist tenets.

THE SHORT ESSAYS THAT FOLLOW, written by over 100 constitutional scholars and lawyers, proceed through the Constitution and amendments section by section. As one would expect, the essays vary somewhat in quality, and no single volume, even one as good as this, can cover all of the legal and political issues raised in and by the Constitution. Even so, the essays are consistent and impressive. Each contributor begins by explaining the most likely original meaning of the relevant provision, citing history or political theory where it is relevant, and acknowledging serious disagreements where they exist. Each entry then treats the canonical cases that frame the legal issues that have arisen from the clause in question. When contemporary doctrine rejects original meaning, the authors explain what current doctrine holds, and why and how the Supreme Court has come to prefer it over original meaning. Each essay concludes with a helpful list of key constitutional provisions, cases, and secondary scholarship.

Because the *Heritage Guide's* essays acknowledge internal disagreements, they also provide a useful barometer of where the originalism movement is strong and where it is weak. Most originalists will agree, for example, with David

Forte's discussion of the Commerce Clause. As Forte explains, the power to "regulate Commerce...among the several States," was originally meant to grant Congress power to regulate trade, transportation, and communication across state lines. This grant tacitly withheld from Congress—and reserved to states—the power to regulate what Chief Justice Marshall described in *Gibbons v. Ogden* (1824) as "the exclusively internal commerce of a State." In other words, Congress could regulate and even ban the flow of marijuana out of California, but it could not use the commerce power to preempt local traffic in and consumption of marijuana, or local policy choices as to whether and when to legalize marijuana, as the Court allowed Congress to do in *Gonzales v. Raich* (2005). Although a few originalists may disagree with Forte's portrait of the law, here they come as close to unanimity as anyone can realistically expect from a bunch of lawyers.

TO BE SURE, ORIGINALISTS DISAGREE on some hard structural questions, and the *Heritage Guide* underscores the strains for those who know where to look. Consider the Necessary and Proper Clause, which gives Congress power to make "all laws which shall be necessary and proper for carrying into Execution" the powers enumerated in Article I and elsewhere. As Seattle University law professor David Engdahl explains, this clause was originally meant to let Congress staff and organize the executive and judicial branches, and to help Congress pass laws to carry its enumerated powers into effect. Engdahl's treatment, however, downplays originalists' problems in interpreting the Necessary and Proper Clause. Some, like Justice Antonin Scalia, place so much priority on minimizing judicial policymaking that they take a hands-off approach to the terms "necessary" and "proper," even when doing so encourages Congress to bootstrap its enumerated powers into a general-welfare power. Other originalists fall out over whether this is the clause that empowers Congress to spend. Originalists who stress history and tradition will say no. In an essay on the Taxing Clause, Chapman University law professor John Eastman explains that by long tradition Congress's spending powers have been assumed to flow from the power to tax to provide for the "general welfare." But other originalists disagree. Stressing the original public meanings of "necessary" and "proper," they insist that Congress may spend only if the spending makes sense as a means to the end of enforcing federal laws or

staffing the executive and judicial branches, and if it is not likely to subvert the Constitution's general structure. While the *Guide* is no less valuable a resource because it omits such rarefied debates, the omissions confirm that the work is best used as an introductory guidebook.

At the same time, this collection shows some of originalists' difficulties in finding consensus on constitutional clauses dealing with individual rights. On some topics, they are in wide and justifiable agreement. For instance, if there is any single article of faith to which all originalists subscribe, it is that the term "due process" refers to "process due." As Boston University law professor Gary Lawson explains in his essay on the Fifth Amendment, "due process" originally meant a "principle of legality," a ban against "executive or judicial action taken without lawful authorization and/or not in accordance with traditional forms of justice." So interpreted, the Due Process Clause does not give federal courts a power to invalidate federal or state actions on the ground that they violate natural property and contract rights (contrary to certain 19th-century state cases, covered by Vanderbilt law professor James Ely in an essay on the 14th Amendment's Due Process Clause) or evolving conceptions of sexual privacy (contrary to the Supreme Court for the past 40 years). But does the 14th Amendment codify any of those same substantive rights when it bars states from "abridging the Privileges or Immunities of Citizens of the several States?" As Hastings law professor Calvin Massey explains, originalists do not have a consensus yet. Some read the clause as forcing states to provide whatever rights they choose to provide on a non-discriminatory basis; some read it as applying to the states the individual rights the Constitution requires the federal government to respect; and others read it as guaranteeing all civil rights that are written into positive law to secure natural rights.

MOST SIGNIFICANTLY, THE *HERITAGE Guide* reveals to what extent originalist lawyers do not appreciate how natural rights and natural-law principles shape constitutional rights. Consider the discussion by UCLA law professor Eugene Volokh of the First Amendment's Free Speech Clause. One must be careful here, for while Volokh is a fellow traveler with originalists, he is not one himself and does not claim to be. Even so, it is striking how Volokh concludes that the Free Speech Clause does not have a coherent original meaning. Its meaning is "elusive," he claims, because

"few people in [the Founding] era really had occasion to define what the constitutional boundaries of speech and press protection might be." Volokh turns quickly to the staples of contemporary constitutional law: recent cases and the normative theories that compete to inform them. Many originalists agree with Volokh; the ones who do not tend to conclude, with Justice Hugo Black 50 years ago and Justice Scalia now, that the Free Speech Clause literally forces Congress to pass "no law" restraining speech.

Neither of these readings is sensitive enough to the natural-law underpinnings of laws "abridging the freedom of speech." As both University of Dallas political scientist Thomas West and Columbia law professor Philip Hamburger have shown, there is considerable evidence suggesting that from the founding through the 19th century, Americans understood freedom of speech to be both a civil and a natural right, subject to civil regulation based on the natural law. Founding era natural-law theory provides a tolerably clear guide for distinguishing a proper "regulation" of free speech from its unconstitutional "abridgement." Inasmuch as pornography and defamation violate the laws of nature, for instance, they fall out of "freedom of speech," and government may regulate them without "abridging" a constitutional freedom.

Volokh doubts that natural-law principles can do such specific work. His skepticism is typical of contemporary lawyers and scholars—even originalists, like Justice Scalia, for reasons that Harry V. Jaffa explained in the Winter 2005/06 issue of the *CRB* ("The Disputed Question"). Natural-law theory was thoroughly discredited in the American legal academy in the first third of the 20th century. Though many originalists are suspicious of legal realism and the other legal theories that supplanted natural law, they have a long way to go to reconstruct the moral imagination that informed the Constitution's drafting and ratification. Absent this moral context, the Free Speech Clause and many other important rights guarantees reduce to unprincipled assertions that cannot be explained by the few concrete examples we have of the founders' attitudes and practice.

In short, while the originalism movement is not triumphant, it is still doing better than anyone could have expected 20 years ago. Only another 20 years will tell whether its contributions will make a serious difference in the academy, the Supreme Court, and the country.

Eric R. Claey's is assistant professor of law at Saint Louis University.

TWICE-TOLD TALES

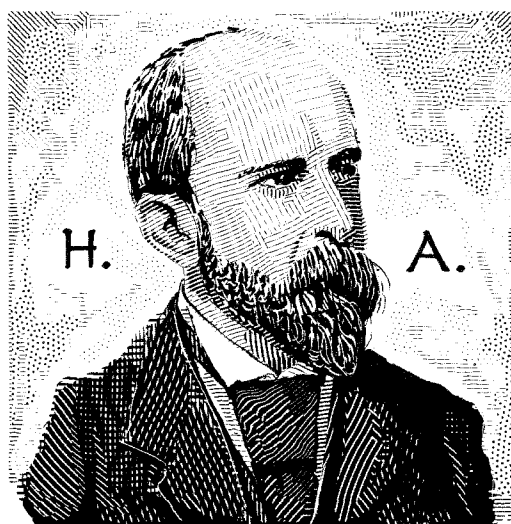
Henry Adams and the Making of America, by Garry Wills.
Houghton Mifflin, 448 pages, \$30

MANY EDUCATED AMERICANS HAVEN'T heard of Henry Adams's *History of the United States of America During the Administrations of Thomas Jefferson and James Madison* (1889-91), a book rarely read and seldom discussed. Garry Wills wants to change that. If he succeeds, he will have done his countrymen a great service. Adams's opus is not just a great work of history; it is a treasure house of wisdom and insight.

A bright and well-read scholar, Wills's flashes of insight come through in this book with a certain regularity. The years he has spent studying the American Revolution and its aftermath serve him well. Even so, his account is awkward and unwieldy, displaying signs of hasty construction and sloppy thought. There are several sparkling sentences, many good paragraphs, but no really good chapters.

Henry Adams and the Making of America has two parts. The first discusses the path that led Adams to history by tracing his intellectual, professional, and literary development. Most scholars stress the importance of the Adams family in Henry Adams's thought. Others stress its Tocquevillian dimension, pointing to Adams's comment that "I have learned to think De Tocqueville my model, and I study his life and works as the Gospel of my private religion." Wills disagrees with the former and ignores the latter. According to him, Adams's favorite ancestor was not an Adams at all. It was his grandmother, Louisa Catherine Johnson (Mrs. John Quincy Adams). Louisa was born in London to a Maryland family. Adams's sympathy for her, combined with his work on her biography and his praise for Virginians such as George Washington and John Marshall, leads Wills to describe Adams as an "honorary southerner." Yet later, Wills quotes Adams's comment to his brother that "[o]ur house needs a historian in this generation," which presumably did not mean the Johnson household. Wills's chapters on Adams's professional development ramble a good deal, but the overall point is that the youthful Adams was not the dyspeptic pessimist of the *Education of Henry Adams*. On the contrary, in these years Adams learned some important positive lessons that would shape the character of his *History*. In particular, he gained practical insight into American politics, and into the nature and purpose of historical writing.

The second, far longer part of the book is little more than a synopsis of Adams's *History*, interspersed with occasional bits of commentary, usually with a reference to one or two other sources, and not always the most recent ones. Wills's chapters on the Jefferson Administration, for example, read sometimes like a moderated dialogue between Dumas Malone and Henry Adams. The plot summaries are not bad, but this part of the book is chock-full of diversions, so much so that the reader often loses track of Wills's point—which has to do with how to read the history. One is left wondering why Wills did not simply turn this part of the book into a 30-page chapter that made his case crisply and coherently.



Buried amid the verbiage, Wills maintains that most readers misunderstand the *History* because they mistakenly view it as the Adams family's revenge upon Thomas Jefferson; and because they read it in light of Adams's *Education*. They assume, in short, that the *History* is a petty work by a bitter man. Moreover, its chief interpreters have been literary scholars, who know little about the politics of the early republic. Yet, somehow the conventional understanding of the *History* that Wills describes rests in uneasy tension with the conventional belief that the *History* is a great work, and a great work cannot be so shallow.

While many readers regard the *History* as little more than a classic narrative, Wills understands that "[i]t is analytical throughout." Adams "turns upside down the previous consensus on the period covered, so drastically that many have missed the point of the *History*

entirely—which is not that Republicans became Federalists in office, but that they led a breakout from both ideologies." In the *History*, the democratic nation rose as America's founding ideologies failed. But according to Wills, Adams thought this an unambiguously good thing, which is more than the facts will bear.

In 1876, shortly before resigning his posts as editor of the *North American Review* and Assistant Professor of History at Harvard to work on the *History*, Adams took a look back at the first American century. He commissioned a series of essays in the *Review*, which took stock of the nation. "The object," he wrote, "is to ascertain whether and to what degree Americans should feel satisfaction or disappointment at the result of a century's activity." Wills comments that "the report card was in fact more favorable, overall, than harsh," though tellingly, "it does not single out for praise the spurt of progress Adams would find in the first sixteen years of the nineteenth century." According to Wills, the *History* "moves from a fragmented country, its regions out of touch with each other and stalled in tired traditions, to a nation pulling itself together." But what about that nation's character? Events, Wills says, forced "party ideology itself, to become that most American of things—pragmatic." He notes Adams's belief that "the American, in his political character, was a new variety of man," but he overlooks Adams comment that, "opinions might differ whether the political movement was progressive or retrograde."

ADAMS THOUGHT IT TOO SOON TO PASS judgment on the American people. Early in the *History*, he notes that the first colonies "all avowed a moral purpose, and began by making institutions that consciously reflected a moral idea." After 1800, Adams found, "From Lake Erie to Florida, in long, unbroken line, pioneers were at work, cutting into the forests with the energy of so many beavers, and with no more express moral purpose than the beavers they drove away." Wills quotes all that, but he cuts off the following sentence, "The civilization they carried with them was rarely illumined by an idea." And he misses the exchange that Adams put on the next page: Jeffersonians believed, "[T]his is progress! I expect it to be made here, under our democratic

stimulants, on a great scale, until every man is potentially an athlete in body and an Aristotle in mind.' To this doctrine the New Englander replied, 'What will you do for moral progress?' Adams notes, "every possible answer opened a chasm." It is therefore no surprise that Wills overlooks the series of questions with which the *History* ends:

They were intelligent, but what paths would their intelligence select? They were quick, but what solution of insoluble problems would quickness hurry? They were scientific, and what control would their science exercise over their destiny? They were mild, but what corruptions would their relaxations bring? They were peaceful, but by what machinery were their corruptions to be purged? What interests were to vivify a society so vast and uniform? What ideals were to ennoble it? What object, besides physical content, must a democratic continent aspire to maintain? For the treatment of such questions, history required another century of experience.

Hardly a triumphant conclusion. Here Adams followed something his great-grandfather had said. On June 7, 1826, less than a month before his death, the second president wrote that American independence would be "a memorable epoch in the annals of the human race; destined in future history to form the brightest or the blackest page, according to the use or the abuse of those political institutions by which they shall in time to come be shaped by the *human mind*." A full lifetime later the jury was still out. The Adamses believed that America would be powerful, but would the nation use its power for good?

HOW DOES WILLS MISS THIS PART OF the story? He has written books about several founders, but not John Adams. He does not know what an Adamsian take on the founding looks like, nor does he notice how often Henry quotes his great-grandfather without attribution (Henry learned John Adams's wisdom at a young age. His first work of history, which Wills does not mention, was assisting his father in editing *The Works of John Adams*). Moreover, Wills does not appreciate the distinction Henry drew between John and John Quincy Adams. While working on this book, Wills became acquainted with Brooks Adams's unpublished biography of John Quincy. In his critique of the manuscript, Henry went after his grandfather with both barrels (one suspects that was partly to challenge his broth-

er's vulgar partisanship). Wills quotes some of these passages with relish, though not always accurately, and from them he mistakenly concludes that Henry had it in for all of the Adams patriarchs. He ignores one important comment, however:

I have turned myself inside out like an india-rubber ball to make a case for everybody, and especially for J.Q.A. whose case is the weakest of the lot, at least for me to defend, because I am most interested in profiting by the defense. The result is what you see. All I ask is to be civil. I will not be as big as brute as J.Q.A. was, but I am ready to go all lengths for his father.

In the *Education* Adams described his opposition to Populism: "he thought it probably his last chance of standing up for his eighteenth-century principles, strict construction, limited powers, George Washington, John Adams, and the rest."

Henry Adams's comments about John and John Quincy Adams shed interesting light on the *History*, which documents the failure of both Hamiltonian and Jeffersonian party doctrines as governing philosophies. All that was left was federalism in its original sense—the sense in which Hamilton, Jefferson, Madison, and the rest of the founders had united in supporting the U.S. Constitution. When Henry Adams praised John Marshall and George Washington, he was praising moderate federalism, which the Adamses regarded as the best legacy of 1789. That was John Adams's brand of federalism. He made Marshall the Chief Justice for a reason. Lauding John Adams explicitly would be bad form for Henry. "I never write about such subjects when I can help it," he wrote, "because, if I admire them, it may be family prejudice." Moreover, John Adams's politics were not popular, and in a democratic republic parties needed popular ideologies. From an Adamsian perspective, the success portrayed in the *History* came at a cost. In order to forge the nation, Wills notes, "this governance violated every principle of both the old parties." If "every principle" upheld by Hamiltonians and Jeffersonians fell by the wayside, what remained? Could pragmatism be justified on its own terms? Few Americans wished to face that question. Near the *History's* conclusion, Adams noted that Americans looked away, "as though conscious that of all misfortunes that could befall the national character, the greatest would be the loss of established ideals which alone ennobled human weakness."

CONCLUDING HIS BOOK, WILLS GIVES A brief for the living constitution. On the one hand, "[t]his eighteenth-century document is still the law of the land, and it must be construed as such." On the other hand, he says, "it reflects a society that was deeply flawed (as all societies must be)." Wills suggests that we indulge in "creative misreading" and "look at how Lincoln construed the Declaration of Independence." According to Wills, Lincoln "said that Jefferson's statement that 'all men are created equal' should mean that blacks are the equal of whites. But it did not mean that to Jefferson." That is a very creative misreading; Jefferson was indeed a votary of human equality. Wills turns to Washington—a hero he and Adams share—who, according to Wills, grew increasingly hostile to slavery as he aged. Yet Washington did not think major steps against slavery were politically feasible in his lifetime, so he did little. Jefferson faced the same problem and reached the same conclusion, and yet Wills does not extend him the same courtesy.

Adams did rather more justice to the founders in general and Jefferson in particular. Jefferson, after all, was his great-grandfather's friend. Henry Adams learned from his ancestors that prudence entails a negotiation between principle and expediency, and assumes that Jefferson understood that reality. In that sense, Adams's book does, in fact, vindicate all the founding fathers. Between the lines it teaches the virtues of a moderate constitutionalism. This constitutionalism does not, as Wills argues, jettison the past in the name of the future, and leave us drifting on a pragmatic sea. On the contrary, it seeks to preserve what was best in the founding as we meet the challenges of the present.

Henry Adams and the Making of America is not a bad book, but it is not particularly good, either. Readers would be better off skipping it and going directly to the fine edition of Adams's *History* published by the Library of America, keeping in mind three things. The *History* is the basic story of how America became a nation, even as its leaders blundered along; at the same time, Adams wished to evaluate the character of that nation; and finally, he tried "to make a case for everybody." That is, he tried to present how they understood things for themselves; and often phrases that seem to present Adams's opinion in fact provide Jefferson's, or Madison's, or John Randolph's. Sometimes Adams agreed with their opinions, but often he chose to keep his own views obscure. He learned from his fathers that free citizens must think for themselves.

Richard Samuelson is a visiting fellow of the Salvatori Center at Claremont McKenna College, and is completing a book on John Adams's political thought.

QUEEN OF THE GRASSROOTS

Phyllis Schlafly and Grassroots Conservatism: A Woman's Crusade,
by Donald T. Critchlow. Princeton University Press, 438 pages, \$29.95



DONALD CRITCHLOW, A PROFESSOR of history at Saint Louis University, has presented us with a comprehensive, meticulously researched, and thoroughly readable biography of the woman who, over the past half-century, has been the principal mobilizer of grassroots conservatism in America. If Bill Buckley has earned the unquestioned right to be hailed as "the godfather of the American conservative movement," then Phyllis Schlafly has a well-nigh equal claim to be recognized as its godmother.

This is not the first biography of Schlafly. A quarter of a century ago Carol Felsenthal published a more personal biography, *The Sweetheart of the Silent Majority*, that told her story up to the election of Ronald Reagan. But a lot of time has passed since then, and Critchlow's book is likely to be the most comprehensive account of Schlafly's remarkable life for quite some time to come.

Although best known for her heroic efforts in defeating the Equal Rights Amendment in the 1970s, the rest of Schlafly's story is equally remarkable. Born Phyllis Stewart into a devout Catholic family in St. Louis in 1924, she was the valedictorian of her class in the Academy of the Sacred Heart, put herself through Washington University (financing her wartime education by working night shifts at the St. Louis Ordnance Plant, testing ammunition by firing rifles and machine guns), graduated Phi Beta Kappa, and received her master's degree

from Radcliffe in 1945, earning A's in all her classes. (Thirty years later, at the age of 51, tiring of criticisms that she "wasn't a lawyer," she enrolled in Washington University Law School and graduated in 1978.)

After Radcliffe, Stewart landed a job in Washington, D.C., as a researcher for the American Enterprise Association (later the American Enterprise Institute), an early sprig of what was later to flower as the American conservative movement. It was during the year she spent at the AEA that Stewart received what Critchlow calls "her first education as a political conservative," reading Henry Hazlitt's critique of Keynesianism, John T. Flynn's denunciations of Roosevelt and the New Deal, and Friedrich Hayek's *The Road to Serfdom*. More importantly, she learned how to recast complex ideas in language accessible to average readers. From Washington, she returned to St. Louis, ready to do battle for the conservative cause.

In 1949 she married Fred Schlafly, a lawyer in Alton, Illinois's leading firm, just across the Mississippi from St. Louis. Schlafly was 15 years her senior, but they shared a devout Catholicism and a deep conservative temperament. They worked together for conservative causes until his death in 1994. (They also raised six children—a fact that harried parents may want to bear in mind as they follow Phyllis Schlafly's astonishing career.)

Three years after becoming Mrs. Phyllis Schlafly, she wrested the Republican nomina-

tion for a Congressional district from the local machine's candidate, but lost the ensuing race against a five-term incumbent in the heavily Democratic Illinois district. But she was, at the same time, finding her footing as a member of the Republican Right—supporting Taft against Eisenhower in the 1952 convention, and becoming a force in the Illinois Federation of Republican Women and the Daughters of the American Revolution.

TO BE A CONSERVATIVE IN AMERICA in the 1950s was to be an anti-Communist. In the first half of the decade, the issue became intertwined with the name and personality of Wisconsin Senator Joseph McCarthy, but it was far larger than that. Throughout the 1950s Schlafly deepened her identification with the anti-Communist cause, and in 1958 she and her husband launched the Cardinal Mindszenty Foundation (named after the imprisoned Hungarian prelate), as a consciously Catholic parallel to Fred Schwarz's Christian Anti-Communism Crusade, which was largely supported by evangelical Protestants.

By 1960, however, anti-Communism as an issue had suffered as a result of the Senate's censure of McCarthy in 1954 and his death in 1957, as well as the long-overdue purge of Communists and their sympathizers from the ranks of government, the unions, and elsewhere. Conservatives were broadening their concerns

to include national defense, the growth of big government, and the perceived threats to traditional values. Above all, there had arisen in the late 1950s a vigorous senatorial spokesman for conservative principles. After a premature attempt by some of his supporters to wrest the 1960 presidential nomination from Richard Nixon, Barry Goldwater was emerging as the clear conservative champion in party contests ahead—including the 1964 convention. Schlafly, who had hitherto been best known in Illinois and the Midwest, captured national attention in 1964 with her book *A Choice Not an Echo*, which proclaimed Goldwater the leader of the conservative movement, espousing policies distinctly different from those of the party's "moderate" leaders.

The book sold an incredible 3.5 million copies in the months preceding Goldwater's nomination in San Francisco and thereafter in the months before Election Day. Schlafly had become a national figure, and was in no mood to give up the fight for conservatism merely because Goldwater was soundly trounced by Lyndon Johnson. Her emphasis, however, now shifted squarely to the issue of national defense, and she co-authored a series of books with Rear Admiral Chester C. Ward (ret.), research director for the American Security Council, warning against what they saw as the Johnson Administration's thoroughly inadequate response to the Soviet threat.

But the liberal Republican establishment recognized the danger she represented to their hope of regaining control of the party, and in one of its final vindictive spasms it prevented her from rising from the vice presidency of the National Federation of Republican Women, to which she had been elected, to its presidency, which traditionally followed.

Schlafly's concentration on the issue of national defense, and specifically strategic nuclear policy, was probably responsible for her blunder in supporting Richard Nixon for the 1968 Republican nomination when California governor Ronald Reagan made a serious and almost successful bid to take it from him.

Reagan's effort to win the nomination in 1968 is often overlooked—not least because Reagan, who shared the typical politician's distaste for reminiscing about his defeats, later tended to dismiss it as merely an effort to "keep the California delegation together." But it was a serious effort nonetheless that came agonizingly close to success, led by a shrewd New York political organizer, F. Clifton White. A trio of British reporters, covering the convention, cor-

rectly described Nixon's final victory margin as "almost insultingly small." It is far from impossible that, if Schlafly had thrown her national grassroots organization behind him, Reagan would have won the nomination, gone on to defeat Humphrey in November, and spared America Watergate, a presidential resignation, and defeat in Vietnam.

In any case, disillusion was not slow in coming. Schlafly, who worked passionately for Nixon during the campaign, had no desire for a full-time job in his administration, but she did request appointment to the powerful and prestigious President's Foreign Intelligence Advisory Board. Nixon not only failed to appoint her to the post, but designated New York governor Nelson Rockefeller, leader of the moribund liberal wing of the GOP, instead.

Schlafly was done with Nixon. After running unsuccessfully against a Democratic incumbent in another of Illinois's congressional districts in 1970, she supported Congressman John Ashbrook's doomed but symbolic conservative battle against Nixon in the 1972 Republican primaries. And then, in that same year, she found the issue with which her name will forever be linked.

WHEN THE EQUAL RIGHTS AMENDMENT passed Congress in March 1972, the common assumption was that this major initiative by America's fast-growing feminist movement would easily assume its "rightful place" in the Constitution. (It had, for one thing, the enthusiastic support of both Gerald and Betty Ford.) Within a year 30 states had ratified it, and only eight more were needed. But the ultra-feminists, and America's politicians generally, hadn't reckoned with Phyllis Schlafly. In September 1972 she organized STOP ERA. By early 1973 there were chapters in 26 states. Schlafly's previous network of supporters, in the National Federation of Republican Women and among fans of her books (especially *A Choice Not an Echo*), were swiftly supplemented by new activists, who were kept informed by her monthly publication, the *Phyllis Schlafly Report*. Her influence soared.

Critchlow recounts the story of her battle against ERA in painstaking detail. Here, let it suffice to say that Schlafly's remarkable work, together with the swing to the right in American public opinion which she had done so much to promote, and which elected Reagan (with Schlafly's enthusiastic support) in 1980, doomed ERA. Despite Congress's

desperate extension of the ratification deadline until June 30, 1982 (ignoring the seven-year limit allowed for the amendment's consideration), the approval of the necessary 38 state legislatures was never obtained. ERA died that last day of June, and Schlafly held a huge and joyful party the same evening in the ballroom of Washington's Shoreham Hotel. She had always known how to get on the nerves of the ultra-feminists. ("I want to thank my husband, Fred Schlafly," she began one talk, "for allowing me to make this speech.") No wonder the late Betty Friedan, one of feminism's more caustic leaders, told her in public, "I'd like to burn you at the stake."

In the more than two decades since the defeat of ERA, Schlafly has continued her battle for conservatism on a host of fronts. In 1977-78 she and other conservatives had already waged (and lost) a vigorous battle against the treaty that gave the Panama Canal to Panama. She was more successful in 1979, when she joined in the widespread public opposition to the SALT II treaty with the Soviet Union, and President Carter was forced to abandon any hope of its ratification by the Senate. She was, of course, deeply involved in the "pro-family" and anti-abortion movements that played such an instrumental role in Reagan's 1980 victory. She surprised a good many conservatives in the early 1980s by opposing their call for a constitutional convention to adopt a "Balanced Budget Amendment." She feared such a convention might be taken over by the Left, and when the smoke blew away Schlafly's legions had blocked support for a convention by just enough state legislatures to kill the idea.

By 2003 the Eagle Forum, which she had founded in 1975, possessed, together with its tax-exempt arm the Eagle Forum Education & Legal Defense Fund, net assets in excess of \$15 million. To be sure, there are other conservative women's organizations in existence now, and one of them, Concerned Women for America, boasts 600,000 members (many of them evangelical Protestants)—far more than the Eagle Forum. But there is simply no rival for the impact Phyllis Schlafly personally has had, over the past 60 years, in the field of grassroots conservatism.

Donald Critchlow's splendid biography of her adds an indispensable chapter to the American conservative movement's remarkable story.

William A. Rusher, a distinguished fellow of the Claremont Institute, was publisher of National Review from 1957 to 1989.



Book Review by Julie Ann Ponzi

GETTING THEIRS

Female Chauvinist Pigs: Women and the Rise of Raunch Culture, by Ariel Levy.

Free Press, 240 pages, \$25

NEVER JUDGE A BOOK BY ITS COVER, but give a good cover its due. It's impossible to ignore the mud-flap girl on the cover of Ariel Levy's eye-opening book, *Female Chauvinist Pigs: Women and the Rise of Raunch Culture*. There she sits, in all her naked glory, familiar arched back and thrusting breast silhouetted in hot white against a background of lurid pink, leaning come-hitherishly against the title's super-sized "PIGS" in bold black caps. Like the female chauvinist pigs (FCPs) Levy discusses in her book, the mud-flap girl means to entice and amuse her onlookers as she "pimps out" (as the kids say) the vehicle she adorns. Beyond that, she just flaps in the wind and gets splattered with mud.

In the popular culture of America today, Ms. Levy argues, FCPs are women who promote the sexual objectification of other women, and of themselves. But, unlike their truck-driving male counterparts, they believe that in doing so they are emancipating women from the patriarchal male agenda of the past.

As part of their emancipation, these "raunch feminists" want to appropriate to themselves the kind of sexual liberation they believe men have always enjoyed. To this extent, they understand themselves to be rebelling against feminism's tendency towards anti-male, anti-sex prudishness. But as Levy notes, female chauvinist pigs do not generally consider themselves opponents of feminism. They believe that their sexual abandon is the natural conclusion of feminism and the sexual revolution and, more importantly, that it will put the final nail in the coffin of the old "double standard." Levy is not impressed. She wonders whether, by dressing like prostitutes and aggressively seeking sex as a conquest and end in itself, FCPs are emancipating themselves from a "male agenda" or just fulfilling the worst of men's wild desires.

Nevertheless, examples of this kind of feminism abound and are described with astonishing detail by Levy, who threw herself into this study with commendable journalistic gusto. She interviewed everyone from the producers and "stars" of *Girls Gone Wild* to old-school feminists like Susan Brownmiller. She absorbed the thinking of high school "hotties," who use sex to achieve social status,

and of a particular brand of lesbian dubbed "bois" (pronounced "boys") who pride themselves on the type of masculine promiscuity made famous by the so-called "Spur-Posse" scandal. Of the ins and outs of "raunch culture," it is hard to imagine a more thoroughgoing, entertaining survey.

Levy is at her best when describing how crass and un-erotic the raunch culture is. One of her many examples is Paris Hilton—considered by devotees to be the über-chick, the ultimate in sexy. Hilton once told a *Rolling Stone* reporter that her boyfriends described her as "sexy but not sexual." Levy notes, "Any fourteen-year-old who has downloaded her sex tapes can tell you that Hilton looks excited when she is posing for the camera, bored when she is engaged in actual sex."



But despite her clear-eyed insights, Levy can't quite bring herself to indict feminism for its role in all this. Too much seems to be at stake for her: her politics, her upbringing in a family of feminists, her education at Wesleyan, her firm—almost quaint and precious—belief in the natural irrelevance of gender difference. All these seem to inhibit her drawing the conclusions to which her research and arguments naturally point. Instead of condemning feminism and the sexual revolution for what they have wrought, she insists that they have been misunderstood by "raunch feminists." Although the FCP may think she is upholding the one true Feminism, Levy argues she is actually tearing down the sisterhood that supports her.

To Levy FCPs are "Uncle Toms" who have sold out to "get theirs." FCPs are certainly getting theirs (and maybe a few other people's), but there is nothing inconsistent in their feminist thinking on the matter. Feminism exalts

the masculine over the feminine. It always has. The "sisterhood" was conjured up precisely to empower the united sisters to scale the citadels of patriarchy, demanding the right to do what men do and to be treated like men. And they succeeded. So now what? In a post-feminist world, why should liberated, masculinized women stick around to boost the morale of a bunch of "girly-girls" talking about their "sisterhood" and sentimentalizing the good old days? With their "raunch" and other hyper-macho strutting, the FCPs are doing just what their feminist grandmothers taught them to do—bursting the shackles of constructed femininity, asserting their existential freedom to have it all. Yes, they are "getting theirs," and consistent, unblushing feminists will celebrate them for it.

LEVY LAMENTS THAT WHEN SHE FIRST noticed this trend among her friends and associates, she "tried to get with the program, but [she] could never make the argument add up in [her] head." She thinks that her aversion to raunch stems from her understanding of true feminism. It doesn't. But it's at least possible that it stems from a nascent understanding of true femininity. If so, her sensible aversion to the FCPs' debased, and debasing, behavior could be an opening for a fruitful dialogue about natural and conventional sex differences. Unfortunately, she shies away from inquiring into the politics or principles of any serious person with whom she thinks she disagrees. She reserves all her venom and vitriol—not for the egregious female chauvinist pigs so vividly described in the book, but for George W. Bush, the Religious Right, and abstinence-only education. She actually has some interesting things to say about abstinence-only education, but her observations are marred by a cartoonish caricature of its advocates.

Still, she proves herself a voice worth listening to, and this book certainly won't be her last. If you have a young daughter, as I do, you have a duty to read it. Levy is right about this much: raunch culture is not a sign of the moral progress we have made, but of how far we have left to go.

Julie Ann Ponzi is a fellow of the Claremont Institute.



Book Review by Steven F. Hayward

THE GRAND ALLIANCE

Churchill and America, by Martin Gilbert.

Free Press, 528 pages, \$30

PEELED AWAY THE LAYERS OF THE LEFT'S disdain for the Bush Administration and you find a fundamental discomfort with the idea of American exceptionalism—the idea, as old as the founding itself, that America is a special, even providential nation because it is, in Leo Strauss's words, “the only country in the world which was founded in explicit opposition to Machiavellian principles.” In sum, the chief political division of our time may be over the nature and meaning of America itself.

It is not surprising, then, that Europeans, committed to an increasingly watery internationalism, take exception to American exceptionalism. Winston Churchill was one of the few foreign statesmen of the last century who embraced American exceptionalism and understood its importance for the world. “My faith in the progress of America is unshakeable,” he said in middle age. Churchill believed in “Anglo-Saxon superiority”; he saw America's greatness as the fruit of democratic principles first sown in Britain. In 1955, during his final Cabinet

meeting as prime minister, he adjured his Cabinet, “Never be separated from the Americans,” an axiom his successors have largely heeded.

Sir Martin Gilbert's new book, *Churchill and America*, is the most complete account of Churchill's lifelong attraction to the Great Republic (as he called the U.S.). On the surface, it is difficult to imagine anything left for Gilbert to say about Churchill, having completed the eight-volume official biography that his son, Randolph Churchill, began in the 1960s. (Initially a researcher for Randolph, Gilbert took on the project himself after Randolph had finished the first two volumes; Gilbert composed the last six over a 20-year period.) And yet, as Gilbert recounts the often day-by-day story of Churchill's sentiments, words, and deeds concerning America, a number of details left out of most biographies emerge. Above all, Churchill's admiration for the U.S. is reaffirmed and amplified.

As with most of his previous books (more than 70 now), Gilbert writes a strict chronological narrative. This straightforward method sometimes attracts criticism for its seeming lack of interpretation. But Gilbert's intelligence and restraint, combined with his thoroughness, are virtues that will make his books the definitive works about Churchill for centuries to come. Although the new volume ends with Churchill's death in 1965, the reader cannot help drawing forward its sentiments to the present moment, when British Prime Minister Tony Blair reprises Churchill's role as America's best friend in time of crisis.

Churchill's appreciation of American exceptionalism was arguably hereditary; he was half-American (“half-alien and wholly reprehensible,” his critics liked to say). “What an extraordinary people the Americans are!” he wrote to his American mother during his first stateside visit in 1895 at age 21. Beyond America's democratic character, Churchill came to believe in what we call the American Dream. As he told Harry Truman en route to Fulton, Missouri in 1946, “If I were to be born again, there is one country in which I would want to be a citizen. There is one country where a man knows he has an unbounded future—the USA.”

During his early visits to America, Churchill acquired a set of convictions that would seem to sit uneasily with each other: an admiration

for free markets, private enterprise, and American-style opportunity, as well as a liking for progressive government, the New Deal, and the Democratic Party—with the exception of William Jennings Bryan, whom he saw as a demagogue. (Bryan's proposal to inflate the currency through free silver, said Churchill, “is like an inebriate regulating a chronometer with a crowbar.”)

CHURCHILL'S KEEN OBSERVATIONS IN America helped him develop his own political sense. During his first trip, for example, he took a dislike to American paper money, calling the dollar “the most disreputable ‘coin’ the world has ever seen.” At the same time he marveled at the “magnificent system of communication” (by which he meant New York City's physical infrastructure). In attempting to reconcile this magnificence with “the abominable currency,” he wrote: “The communication of New York is due to private enterprise while the state is responsible for the currency: and hence I come to the conclusion that the first class men of America are in the counting houses and the less brilliant ones in the government.”

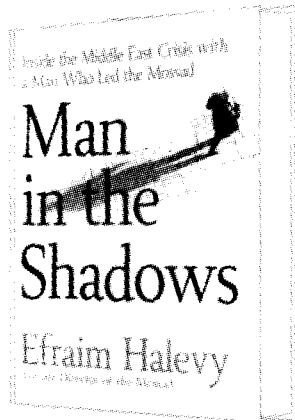
After World War II, Churchill advocated a “United States of Europe,” a precursor in some ways to today's problematic European Union. He broached the idea as early as 1914 as a means of preventing general war in Europe. But he always placed a higher priority on union with America, even proposing at one point common citizenship between the U.S. and the British Commonwealth, and in another advocating a merger of the nations' currencies, which he denominated the “Sterling Dollar.”

Gilbert offers revealing glimpses into Churchill's character, missed by most of the standard biographies. For instance, after a taxicab struck and nearly killed him on Fifth Avenue in New York in 1931, Churchill, who admitted at the scene that the accident had been entirely his fault, became “deeply concerned lest the driver's part in the accident might hinder him in getting work.” He received the driver, Mario Contasino, as a visitor in the hospital, and later gave Contasino a signed copy of one of his books. In 1944, Churchill's schedule for a visit to the U.S. held up the sailing of the *Queen Mary* for nearly a week. When Churchill learned that his delay might cut into the leave-time of a large number

“Efraim Halevy's memoir makes for fascinating reading. At a time when we face unprecedented demands on intelligence, his insights and suggestions on fighting terror should be required reading for policy-makers.”

—Ambassador Dennis Ross

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in April
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everywhere.



of American soldiers on board, Churchill appealed directly to Roosevelt that their leaves be made whole. (FDR agreed.) Both episodes demonstrate a thoughtfulness rarely found in high-level politicians.

But in at least one respect, Churchill departed from his typical admiration for America: his regret, verging at times on bitterness, over American isolationism between the wars. Gilbert quotes Churchill on the U.S.'s refusal to ratify the Treaty of Versailles in November 1919: "A more melancholy page in human history could hardly be conceived. We cannot believe that it will be written by American hands." "For the rest of his life," Gilbert notes, "Churchill saw America's failure to become part of the League of Nations as a turning point in the prospects not only for European but for global peace."

Churchill returned to this theme many times in succeeding decades, including in his speech to Congress shortly after Pearl Harbor: "If we had kept together after the last war, if we had taken common measures for our safety, this renewal of the curse need never have fallen upon us." This, says Gilbert, was greeted with "less applause" than some of his other pronouncements. And there was silence when Churchill added: "Five or six years ago it would have been easy, without shedding a drop of blood, for the United States and Great Britain to have insisted on the fulfillment of the disarmament clauses of the treaties which Germany signed after the Great War." Churchill was arguably being unfair, inasmuch as Neville Chamberlain had rejected FDR's offer to mediate an international conference with Germany, which might have drawn America closer to the fray earlier on, or at least provided FDR with a greater latitude for action. Yet one must admire Churchill's patient understanding of the constraints imposed on FDR by American public opinion.

ALTHOUGH GILBERT'S CHRONOLOGICAL approach is readable and highly useful to other scholars because of its comprehensiveness, it thwarts a more thematic examination of Churchill's relationship with America. One crucial theme downplayed by Gilbert's approach is Churchill's thought on the nature of American and British democracy, and the differences between them. This bears especially on Churchill's longstanding grievances with American isolationism. He attributed Ameri-

can isolationism in part to the Constitution: "The American Constitution was designed by the Founding Fathers to keep the United States clear of European entanglements—and by God it has stood the test of time." Churchill, it seems, disliked the separation of powers at the heart of American constitutionalism, which constrains the president's power in war and foreign policy. In the 1950s, Churchill said he thought the U.S. Constitution should be amended so that at least half the president's cabinet would have seats in Congress, thus making the American system more like parliamentary government.

One wonders, then, how complete was Churchill's understanding of American democracy. Gilbert's book only touches on this tantalizing question. For although he mentions Churchill's July 4, 1918, speech to the Liberty Day meeting of the Anglo-Saxon Fellowship, Gilbert omits what Churchill had to say about the Declaration of Independence:

The Declaration of Independence is not only an American document. It follows on the Magna Carta and the Bill of Rights as the third great title-deed on which the liberties of the English-speaking peoples are founded.... The political conceptions embodied in the Declaration of Independence are the same as those expressed at that time by Lord Chatham and Mr. Burke and handed down to them by John Hampden and Algernon Sidney. They spring from the same source; they come from the same well of practical truth....

Churchill is on solid ground in championing British thought as the wellspring of American liberty; Thomas Jefferson included Sidney among the sources of the Declaration of Independence, after all. But it is unclear here whether Churchill went so far as to affirm Lincoln's belief in the Declaration as the expression of the case for the liberty of *all* people, not just English-speaking ones.

Such doubts are offset, however, by Churchill's remarkable appreciation of *The Federalist* in his *History of the English-Speaking Peoples*. (Gilbert doesn't mention this.) He calls *The Federalist* "among the classics of American literature," and observes that "their practical wisdom stands pre-eminent amid the stream of controversial

writing at the time." Churchill also quotes extensively from the famous *Federalist* 10, or should I say the *now* famous *Federalist* 10, for Churchill wrote at a time when *The Federalist* was distinctly out of fashion in Anglo-American political science. Clearly there is still more to be said about the great man's understanding of America.

Nonetheless, this understanding resides at the very heart of the Anglo-American "special relationship." If that partnership is to endure, it requires confidence, both in Britain and at home, in the principles behind American exceptionalism. The ordeal in Iraq is testing this relationship, as is the general undertow of European decadence. Yet there is reason for encouragement. A year ago Gilbert reflected in the *Observer* on whether George W. Bush and Tony Blair might become heirs to the legendary Churchill-Roosevelt partnership:

Although it can easily be argued that George W. Bush and Tony Blair face a far lesser challenge than Roosevelt and Churchill did—that the war on terror is not a third world war—they may well, with the passage of time and the opening of the archives, join the ranks of Roosevelt and Churchill. Their societies are too divided today to deliver a calm judgment, and many of their achievements may be in the future: when Iraq has a stable democracy, with al-Qaeda neutralised, and when Israel and the Palestinian Authority are independent democracies, living side by side in constructive economic cooperation....

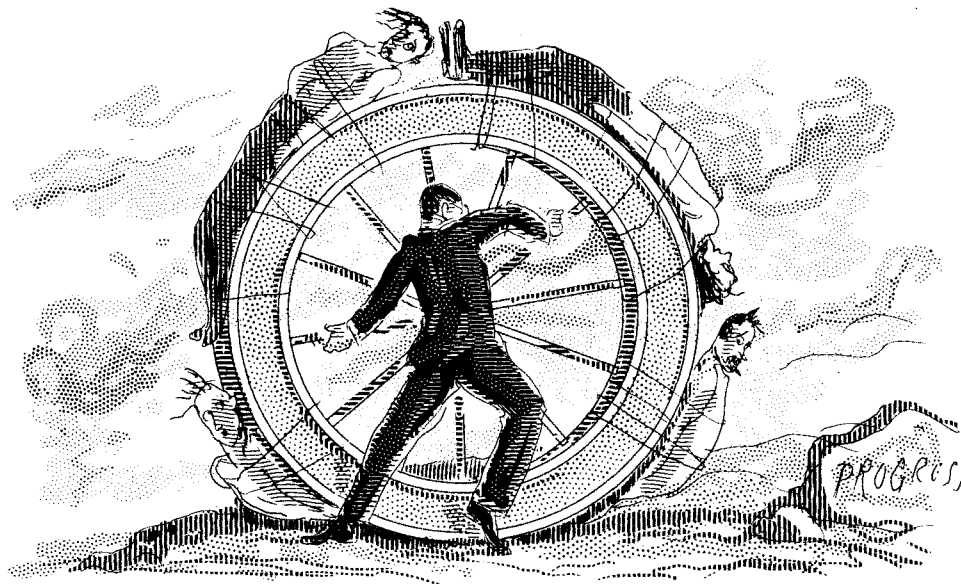
Bush recently said at a White House meeting with Blair: "I am a lucky person, a lucky President, to be holding office at the same time this man holds the prime ministership." This brings to mind Roosevelt's comment to Churchill: "It is fun being in the same decade as you." Behind these words are a hidden wealth of allied cooperation on the future.

Let us hope so.

Steven F. Hayward is the F.K. Weyerhaeuser Fellow at the American Enterprise Institute in Washington, D.C., and author of *Greatness: Reagan, Churchill, and the Making of Extraordinary Leaders* (Crown Forum).

LEAVING THE CONSTITUTION

Politics and Administration: A Study in Government, by Frank J. Goodnow,
with a new introduction by John A. Rohr. Transaction Publishers, 270 pages, \$29.95



THE UNITED STATES FEDERAL COURTS exercise vast discretionary authority from a position of almost complete independence. The debates triggered by the two recent Supreme Court nominations underscore this truth. High on the list of reasons why elections matter is that the people can influence the courts only by selecting the president who will nominate judges, and the senators who will confirm them.

The courts have the final say over hot-button political issues like abortion and the death penalty. But almost as important is the large discretion with which bureaucratic agencies operate today. The Environmental Protection Agency, for example, influences the day-to-day meaning of property rights, the Food and Drug Administration decides on the legality of the “morning-after” or abortion pill, and the Federal Election Commission tells us what, concretely, free speech means. Politicians who must face the voters in even-numbered years are often more than willing to let life-tenured judges and bureaucrats make hard decisions about such controversial issues.

It’s clear that the original design of our Constitution did not allow for essentially legislative authority to be exercised by officials who are not elected legislators. As *CRB* readers know better than most Americans, the Progressive movement played the decisive role in the long journey from the Founders’ Constitution to the

modern American state. Woodrow Wilson, Theodore Roosevelt, Herbert Croly, and John Dewey argued explicitly and energetically that the Constitution was outdated. These Progressive leaders and their allies were the first to reject the Constitution’s core principles in favor of modern, big-government liberalism.

When considering, more particularly, the courts’ and the bureaucracy’s positions of authority in today’s liberal state, we ought to look carefully at a Progressive who gets much less attention: Frank J. Goodnow. Transaction Publishers’ new edition of Goodnow’s *Politics and Administration* provides valuable insights into the origins of modern liberalism.

GOODNOW WAS THE FOUNDING PRESIDENT of the American Political Science Association, and helped launch not only political science as an academic discipline but also administrative law and public administration. He was a student of John Burgess, whose political conservatism he did not share; Burgess brought him to Columbia after Goodnow had spent time studying in France and Germany. Although he later went on to serve 15 years as president of Johns Hopkins University, it was at Columbia that Goodnow produced most of his work, including *Politics and Administration* (1900).

An early advocate of big government, Goodnow understood that the greatest obstacle

to it was the Constitution of the United States—especially the separation of powers—and the principles of the Declaration of Independence upon which the Constitution rests. *Politics and Administration* provided a new vision for America’s governing institutions and the arrangement of national power. In subsequent works, such as *Social Reform and the Constitution* (1911) and *The American Conception of Liberty and Government* (1916), Goodnow showed how this new vision arose from a critique of the bedrock ideas of American government. He complained about the “reverence” Americans had for their founding, which he regarded as “superstitious” and an obstacle to genuine political reform. In particular, he held that the focus on government’s permanent duty to protect individual natural rights had impeded the marked expansion of governmental power that Progressives desired. He objected that the founders’ principles were “permeated by the theories of social compact and natural right,” which he regarded as “worse than useless” since they “retard development.”

A main problem was that Americans believed their rights “unalienable,” to use the Declaration’s term—i.e., they cannot be defined or taken away by government. This made it difficult for Progressives to put the government in charge of private property, and so Goodnow argued for a positive understanding of rights as granted by government itself:

The rights which [an individual] possesses are...conferred upon him, not by his Creator, but rather by the society to which he belongs. What they are is to be determined by the legislative authority in view of the needs of that society. Social expediency, rather than natural right, is thus to determine the sphere of individual freedom of action.

Such a view of rights would open the door for a new arrangement of national power that would not be so confined by the concern for individual liberty. By suggesting such a new dispensation, Goodnow helped to found today's judicial and bureaucratic regimes.

IN POLITICS AND ADMINISTRATION, GOODNOW criticized the constitutional separation of powers between the legislative, executive, and judicial branches, and suggested instead a two-part division, between politics and administration. The traditional system, he argued, interfered with the national government's efficient operation and kept it limited in scope. His system, by contrast, would free up administration from political interference, allowing administrators wide discretion to regulate the complex modern economy without interference from politicians. Politics, he contended, was "polluted" and full of "bias," whereas administration was all about the pursuit of "truth." He was among the first to join Woodrow Wilson in calling for a powerful central bureaucracy, insulated from political control and equipped with expert authority to enact and enforce regulations.

What does this have to do with the courts today? Goodnow considered courts to be part of the administrative machinery, which distinguished his argument from many other Progressives' and makes it highly relevant to the politics of the 21st century. Administration, he claimed, involves both the "administration of government" (by agencies) and the "administration of justice" (by courts). Administration—made up of agencies and courts—is modern government's focus and the primary means by which Progressivism would be realigned, free from the impeding forms of the Constitution. As he wrote in *Comparative Administrative Law* (1893), the book that first drew attention to him, "the great problems of modern public law are almost exclusively administrative in character. While the age that has passed was one of constitutional, the present age is one of administrative reform."

Even though "administrative" courts and agencies are insulated from political control, Goodnow insisted that they should not be confined merely to implementing policies determined by the people's elected representatives: in interpreting the law, courts and agencies would share in its making. Courts, especially, would not simply be an umpire. Goodnow wanted the courts to be involved in pitching and batting as well. Thus he called for unelected judges who would make law through constitutional interpretation, and unelected bureaucrats who would make policy after congressional delegation to them of legislative powers.

IN BRINGING GOODNOW'S LONG OUT-OF-PRINT book to us, Transaction performs a great service—a service that it has repeated with several vital Progressive-era works such as Wilson's *Congressional Government* and Croly's *Constitutional Government in the United States*, Croly's *Progressive Democracy*, and Walter Weyl's *The New Democracy*, to name a few. Other important works are expected in the near future, including *The Stakes of Diplomacy* by Walter Lippmann and *The Business of the Supreme Court* by Felix Frankfurter and James Landis. These reprints come with useful new introductions; Sidney A. Pearson's for *Constitutional Government* and *Progressive Democracy* are especially worth reading.

John A. Rohr's introduction to *Politics and Administration* is also quite good. Rohr capably identifies the philosophical inspiration behind Goodnow's assault on the separation of powers: the German philosopher Hegel. "Because of its grounding in the principle of separation of powers," Rohr explains, "the Constitution of the United States would present difficulties for any unity-seeking Hegelian. Goodnow was no exception." This clear-sighted observation is welcome from a writer who has made questionable arguments for the constitutionality of the administrative state. But readers can certainly benefit from Rohr's analysis of Goodnow, and especially from the renewed availability of *Politics and Administration*, truly a landmark work in our constitutional decline.

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Book Review by Myra Moss

MUSSOLINI'S BRAIN TRUST

Mussolini's Intellectuals: Fascist Social and Political Thought, by A. James Gregor.
Princeton University Press, 288 pages, \$35

"FASCIST" IS NOWADAYS A SWEAR-word for a politician or political stance one strongly dislikes. Orwell observed a half-century ago that the term was already on its way to vapidness; in our time, it has lost almost all specific meaning. This intelligent book is a helpful reminder that "Italian Fascism" was historically the first, and remains the most authentic, expression of fascism as an intellectual movement.

A. James Gregor, professor of political science at the University of California, Berkeley, has written several useful books on the fascist era. His latest, *Mussolini's Intellectuals: Fascist Social and Political Thought*, exhibits his clear, incisive writing style, and is adorned with detailed notes, mostly referring to volumes in Italian. This is a book written by a scholar for scholars (and students) of the Italian fascist movement—all the more reason the volume should have included a bibliography and cited, wherever possible, the best English translations of the principal Italian works.

To most readers, Gregor's often apologetic tone regarding fascism, not to mention his sparse criticism of fascist ideas, will appear provocative. But he is not alone. His position is consistent with several recent revisionist interpretations of the history of fascism that have appeared in Italy and elsewhere. At any rate, he leaves no question about his main thesis: fascism was animated by a credible and coherent belief system. If "credible" means that fascist ideas were believed by hundreds of thousands of Italians as well as foreigners, he is right. But if "credible" means verifiable in some empirical sense, he is not; no idealist epistemology (including the Italian fascists') that denies the reality of an independently existing world is credible. Besides, such facts as the dissolution of the Italian Parliament, the censorship of books that criticized Mussolini's regime, the annexation of foreign countries by force, the murder of Matteotti and other Italians, the destructive acts of the *squadristi*, the imprisonment of critics, such as Antonio Gramsci and Guido Calogero, and finally the imposition of Italian racial laws—all contradicted fascism's self-declared liberalism and its neo-Hegelian concept of the ethical state. The fact that fewer Jews were killed in Italy than

in Germany does not, in itself, lessen Italian fascist injustice or immorality.

Gregor argues for the coherence of fascist ideas, as well. If "coherence" implies a set of propositions each of which is consistent with the others, Gregor himself casts doubt on fascism's coherence over time. For example, neither Giovanni Gentile, who was after all the self-proclaimed philosopher of fascism, nor most of the other fascist thinkers covered in this book, ever believed in the German idea of racial inferiority. Nor could such an idea be logically deduced from early Italian fascist ideas. Note, too, that fascist ideology did not presuppose a coherence theory of truth. In the fascist account, what was true consisted in the most recent pronouncements either by *il Duce* or by his elite, regardless of consistency with past statements; in short, truth was the creative act of the *uomo fascista*. So coherence becomes irrelevant for fascist ideas, because truth depends on both the time when a statement is expressed and who expresses it. Here, in the idea of truth as willful creation by the elite or the *uomo fascista*, we can see the influence of 19th-century thinkers, especially Nietzsche. Yet Gregor refers to Nietzsche only in passing.

Gregor denies the influence of irrationalism on fascist doctrine, and the texts support him. Yet I would add that, for these thinkers, a complete understanding of any human action or expression had to include, alongside will and thought, *feeling*. All three activities were equally important for 20th-century idealism. It is difficult to understand, especially in the light of the neo-Hegelianism developed by the philosopher of fascism himself, Giovanni Gentile, and by his student, Ugo Spirito, how anyone could think otherwise.

ALTHOUGH IN THIS BOOK GREGOR DEVOTES most of his attention to lesser lights, Gentile remains the most systematically philosophical, and by far the most brilliant, of the group of fascist intellectuals. It would have been helpful if Gregor had more thoroughly discussed the philosophical roots of Gentile's "actual idealism," and his early influence on Mussolini and his followers. According to the author, during the

1920s British and European thinkers considered Gentile the most brilliant philosopher of education on the continent and the principal spokesman for Italian neo-Hegelianism. Gentile was Mussolini's first Minister of Public Instruction. His reforms left a lasting impact on Italian education, particularly his ideas for national examinations and the night school. Benedetto Croce, who during the first two decades of the 20th century was one of Gentile's strongest supporters, publicly broke with him in the early 1920s. But as Gentile noted, their fundamental differences had begun to emerge much earlier. At least since his *Ciò che è vivo e ciò che è morto della filosofia di Hegel* (*What is Living and What is Dead in the Philosophy of Hegel*), published in 1907, Croce had rejected neo-Hegelianism. He remained a liberal neo-Kantian.

Gregor's choice to treat the fascist intellectuals and their ideas chapter by chapter proves somewhat awkward, due to their mutual influence on one another. Perhaps a more seamless division by theme would have been better. Still, he gives a dependable overview of, for instance, Spirito, who did more than anyone else to disseminate Gentile's philosophy. When I was a student at the University of Rome, taking a course from Professor Spirito, I was told (not by him) that Gentile's two brightest students were Spirito and Calogero. Calogero became an Italian pragmatist, much impressed by the philosophy of John Dewey, whereas Spirito became first an "actual idealist," then after World War II a Marxist, and finally an existential nihilist.

MUSSOLINI'S INTELLECTUALS DISCUSSES other fascist thinkers, including Sergio Panunzio, Camillo Pellizi, and Carlo Costamagna, now known mainly to specialists. It barely mentions some arguably more famous and influential fascist minds. But they all held to an idealist epistemology, according to which what we know is the creation of intellect, feeling, and will. In short, they proposed, contrary to Marx and to the positivists, an idealist metaphysics. This was the culmination of Italian neo-Hegelianism, as filtered through the ideas of Bertrando Spaventa. Indeed the roots of Gentile's "actual

idealism," at times labeled a "philosophy of immanence" and the metaphysics of the "I" (*io*), partly lay in Spaventa's conception of spiritual idealism. To spiritualize means to make an external object one's own by transforming it. During this process, the self appropriates and synthesizes a material object. By psychologically assimilating and unifying it, the self creates a spiritual object out of a material one.

In their rebellion against Kantian and Enlightenment intellectual dualisms, the Italian neo-Hegelians wanted to unify what they believed that Kant had put asunder—thought, will, feeling; subject and object; man and nature; ought and is, citizen and state; nature and God; spirit and matter. What was described as the actual idealism of Gentile and his followers was not only epistemological but also metaphysical: ultimate reality is a spiritual organic unity. The presence of an organic unity requires that the relations between its parts be necessary, not accidental or

fortuitous, such that if any part were changed the whole organism would be altered. This concept was essential to the fascist idea of the nation-state, which was employed to justify the notion that the state was more real and more valuable than its citizens. The nation-state expressed the highest spiritual reality; it was the march of the fully immanent God on earth.

FASCIST LOGIC, BASED ON THE NEO-Hegelian dialectic of thesis, antithesis, and synthesis, supported the idea of progress. The nation-state expressed the best political, ethical, economic, and sociological order possible at a given time and place; it expressed the people or nation in the fullest and highest sense. Rebellion against the state in the name of abstract, permanent ideals that supposedly existed independently of human beings, or on the ground of natural rights, was never justifiable. Nevertheless, for

fascism, reform or even revolution understood in terms of the dialectical progress of human nature and values should occur continually *inside* the state. Such conflict took place within the structure of all political regimes, which were fated to evolve, through conflict, into ever more harmonious entities.

Of course, fascist discord too often produced disharmony rather than superior harmony, and at times ended in nihilistic chaos. The limits of fascist idealism were evident to thinkers like Croce long before these illiberal imperatives began to assert themselves in practice, and, needless to say, long before the Nazis put their own stamp on matters. Too late, experience joined reason in exposing the folly of Italian fascism's belief in history's inerrancy and the state's divinity.

Myra Moss is professor of government and of philosophy and religious studies at Claremont McKenna College.

WAS JOE MCCARTHY RIGHT?

NEW ARCHIVAL EVIDENCE ON SOVIET ESPIONAGE IN AMERICA

BY DR. HARVEY KLEHR

RICARDO J. QUINONES DISTINGUISHED LECTURER FOR ACADEMIC YEAR 2005-06

DR. HARVEY KLEHR, the Andrew W. Mellon Professor of Politics and History at Emory University, is one of the first Western researchers permitted access to the archives of Communist International (Comintern). He contends that, contrary to views common in both orthodox and revisionist historiography, the Communist Party of the United States (CPUSA) "was never an independent American political party but a creature given life and meaning by its ties to the Soviet Union." Klehr holds that the Soviet archives and the decrypted Venona files reveal "evidence of monetary support and use of the CPUSA for espionage" and that "the leadership of the CPUSA not only knew about the espionage, but actively participated in it."

DR. KLEHR has authored or co-authored eleven books, including *The Amerasia Spy Case: Prelude to McCarthyism*; *The Soviet World of American Communism*; *Venona: Decoding Soviet Espionage in America*; and *In Denial: Historians, Communism and Espionage*; as well as numerous articles and reviews for such publications as *The New Republic*, *The Wall Street Journal*, and *The New York Review of Books*. In 2004, he was appointed to the National Council on the Humanities.

WEDNESDAY, APRIL 19, 2006
 MARIAN MINER COOK ATHENAEUM
 CLAREMONT MCKENNA COLLEGE
 CLAREMONT, CALIFORNIA

Dr. Klehr's talk begins at 6:45 p.m., following a reception at 5:30 and dinner at 6:00.
 The lecture is free and open to the public; those who wish to attend the reception and dinner should contact the Athenaeum directly at (909) 621-8244 or (909) 621-8245).

THE OPIATE OF THE MASSES

by Joseph Tartakovsky

IN FALL 1977, THE STATE VODKA MONOPOLY OF THE POLISH PEOPLE'S Republic filed suit in an international trade court, claiming that vodka had first been distilled in Poland. For this reason, it argued, only Polish firms had the right to sell the clear, flavorless alcohol in foreign markets under the name "vodka," just as champagne produced outside France's Champagne region must usually be labeled "sparkling wine."

An incredulous Soviet Ministry of Trade initially ignored this as a bad Polish joke. Who doubted that vodka was as Russian as St. Basil's Cathedral and fur hats? But it was a particularly pernicious joke, touching the tender parts of the Russian soul, not to mention Warsaw Pact solidarity. The Soviet Ministry of Foreign Trade grudgingly asked the Higher Scientific Research Institute of the Fermentation Products Division of the Central Department of Distilling of the Ministry of the Food Industry of the USSR to investigate. When state archives revealed little about vodka's Russian provenance, the task fell to a historian named William Pokhlebkin. After years of painstaking research, he concluded that vodka was probably first distilled in a Moscow monastery between 1440 and 1478, decades before its alleged appearance in Poland.

Etymologically, "vodka" in Russian means "little water" (it's the diminutive of *voda*, or water). And because the average Russian guzzles a world-record 5.2 gallons per year, a little water has gone a long way in damaging the collective body politic. A few years ago, the Finnish physician directing the Russian office of the World Health Organization explained: "If you did this in Finland, half the population would be dead in a year. This is clearly not normal." The people disagreed: "It's our way of life. How can we stop drinking when our climate is like this?" said one. Said another: "Our people are very patient, and they're willing to live in poverty, but if the government tries to make them stop drinking, it might lead to social unrest. Nobody can make us stop drinking."

Not that the powers didn't try. In 1917, the Bolsheviks banned vodka and condemned drunkenness as a "social evil irreconcilable with the proletarian ideology," perhaps because they believed, as Engels had stated, that drinking was the bane of the working classes. It is probably closer to the truth to say that work was the bane of the drinking classes. No vocation without intoxication, cried the workers, and in 1924 the ban was reversed—an early instance of Soviet utopianism succumbing to Russian reality. It was downhill from there. Alcohol consumption rose through the decades, and not until the 1980s did the government try again. Gorbachev's *perestroika* included a "war on drunkenness" that took the form of prohibition. Official statistics showed alcohol consumption begin to decline. At the same time, there emerged unusual shortages of cologne, mouthwash, and other alcohol-containing substances, as well as sugar, which can be employed in home-brewing. Ultimately, instead of defeating alcoholism, *perestroika* ended in history's biggest hangover.

So, as Lenin asked, What is to be done? Pokhlebkin was not only a historian but a Soviet patriot, and when his scholarship for the trade ministry was published as a book (*A History of Vodka*), he added a final chapter lamenting what he saw as Russia's descent into alcoholism.

Drunkenness, he argued, is incompatible with socialist principles; it undermines worker morale and productivity. Some of his proposed solutions were radical by Russian standards—revoking the licenses of drunk drivers, encouraging people to attend clinics (Alcoholics Anonymous was banned under the Soviet Union)—but he did make one point that NRA members will recognize and all votaries of free will can endorse: vodka doesn't intoxicate people, people do. It follows that to avoid drunkenness, the people must simply drink properly.

CLASS ANALYSIS WAS SUPPOSED TO HAVE EXPIRED WITH THE Cold War, and Pokhlebkin died in 2000. But working Russians have as much need as ever to know how Pokhlebkin's principles might answer Lenin's question today. A more or less dialectically certain application would go something like this: a good proletarian doesn't have a drinking problem, except when he can't find a drink. Vodka, after all, is the oil that keeps Russia's gears turning: funerals, folk holidays, and festivals all require it. The informed worker knows that vodka's therapeutic merits far surpass those of the Soviet-Russian mental health system. Nor would he tempt fate by trekking out into the snow—best known for destroying invading armies—without a fortifying swig or three. This winter, during Moscow's cold spell (-30°C and below), one circus trainer served his elephant a bucket of vodka, for warmth (innovation is the mark of the productive worker). Probably he should have made it a double. The ungrateful pachyderm lost his sense of decorum and proceeded to destroy the circus's only radiator.

The right-thinking worker knows that vodka should be served as cold as possible. (Quality vodka doesn't freeze. A good vodka may be judged with a single sip, but in such matters it is best to be thorough.) It should be served in glasses that resemble our shooters, only

larger, and sipped indulgently. Each sip should be closely seconded by a mouthful of savory food (a thick cabbage soup or hearty meat dish is ideal, but a pickle also works). The idea that alcohol is food's intimate companion, incidentally, raises the question of the cocktail, in worship of which an "hour" has been set aside in American civilization, segregated from substantial solid proteins. The properly educated proletarian looks on the bourgeois cocktail with a cold eye, and not just out of class resentment or the lack of nutrition. He prefers his tipples uncompounded mostly because the orange juice or other mixers cost more than the vodka. Fixing a proletarian cocktail requires only two quick motions: pour the "cocktail," put the cap back on the bottle.

Russia is a land that has stumbled fatefully from Third Rome to Third International to Third World, and vodka has always been there to help things along. In 1982, the international tribunal appointed to decide the matter of vodka's origin ruled in the USSR's favor, affirming that genuine vodka was Russian, or Russian vodka was genuine, whichever it was. A happy conclusion, followed shortly by the fall of Communism in Europe, to which we can always raise a glass, and say, as they do in Russia, not without a touch of irony, *Na zdorovye*—"To your health!"

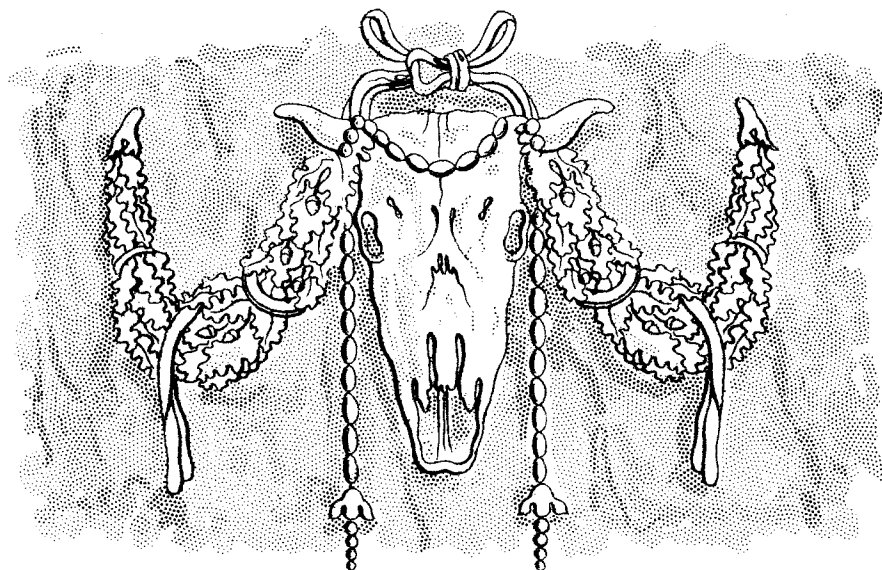
Joseph Tartakovsky is assistant editor of the Claremont Review of Books.



SHADOW PLAY

CROSSING THE RUBICON

by Martha Bayles



WHEN STAGING A PRODUCTION OF Shakespeare's *Julius Caesar*, the first thing one must decide is how to slant it, because the play's sympathies are quite evenly divided between the conspirators, especially Brutus, who persuade themselves that assassinating Caesar will restore the Republic, and the Caesarians, who get the best lines (Mark Antony), not to mention the victory (Octavian). It is possible to slant the play by cutting it, of course. But it is better to do so through interpretation.

Or one can keep *Julius Caesar* idling in neutral, as Joseph L. Mankiewicz did when adapting it for the big screen back in 1953. At that time, the "swords and sandals" epic was part of Hollywood's counteroffensive against TV, so the emphasis was on spectacle: scarlet Roman legions against the rocky terrain of Italy (or Los Angeles County); white marble vistas stretching to the matte-painted horizon; vast interiors decorated in a style best described as Il Duce Does Vegas. Thanks to the self-imposed censorship of the production code, popularly known as the Hays Code (after Postmaster Will H. Hays, who administered it between 1922 and 1945), these epics were also free of all bodily fluids except the occasional trickle of blood, sweat, or tears. Likewise politics: not until 1960, when Dalton Trumbo emerged from behind his many fronts to write *Spartacus*, did the epic become "swords, sandals, and socialism."

Personally, I am still waiting for Hollywood to tackle the Gracchis, those notorious price-fixing, land-distributing tribunes who a century before Caesar introduced a fateful note of direct democracy into the Roman Republic. If today's Trumbos would read some history and stop obsessing on how the oil industry caused 9/11, they would see the cinematic potential

"Rome"
HBO Drama Series

Created by John Milius, William Macdonald, and Bruno Heller.

Written by Bruno Heller, John Milius, David Frankel, William J. Macdonald, Alexandra Cunningham, and Adrian Hodges.

Directors include: Michael Apted, Allen Coulter, Julian Farino, Jeremy Podeswa, Alan Poul, Mikael Salomon, Steve Shill, Alan Taylor, and Timothy Van Patten.

of the Gracchis—especially since there is now no production code to forbid showing Tiberius Gracchus getting clubbed to death, or even better, his brother Gaius being decapitated by thugs on the aristocrats' payroll, who then proceeded to pour molten lead into his skull and murder 3,000 of his followers without trial.

Getting Rome Right

IF YOU'RE STILL READING OUT OF SHEER ZEST for Roman ferocity, then by Jove, do I have the TV series for you! HBO's *Rome* (co-produced by the BBC) is not the first swords and sandals epic to remind us, in graphic terms, what those handsome swords were actually used for. The pioneer here was *Gladiator* (2000), Ridley Scott's hugely popular film about a power struggle between Maximus, a fictional general chosen by the emperor Marcus Aurelius to succeed him, and Commodus, the emperor's sick kitty of a son. There is a smidgeon of politics in this muddy bloodbath, but it consists only of a senator named Gracchus (get it?) who 220 years after the death of Julius Caesar still dreams of restoring the Republic.

The first season of *Rome* aired last year, and while it is not yet available on DVD, it can be accessed "on demand" (meaning the customer must pay extra and be a computer geek to boot). Is HBO going to rebroadcast the first season? There are rumors to that effect, but apparently the date and time are classified information. Will there be a second season? There is some dispute about this, owing to high production costs and the fact that viewers have not yet clamored for *Rome* as they have for the *Sopranos* and *Six Feet Under*.

Give the viewers a chance, I say. *Rome* is no harder to follow than *Deadwood* and a whole lot more rewarding. Not only is it one of the best

TV series ever made, it is also one of the best screen portrayals of Rome, surpassing a whole herd of Hollywood sacred cows. In part, this is due to smarter production values. Rome has always been costly: in 1925 MGM spent \$3.9 million on the first *Ben-Hur*; in 1959 it spent \$15 million on the second; and in 2000 Dreamworks coughed up nearly \$150 million for *Gladiator*. The budget for *Rome* is \$100 million, but considering that this paid for 12 hours not just two or three, it seems to me the money was spent exceedingly well.

The five-acre set, built in cooperation with Cinecittà Studios near Rome, recreates the real ancient city, not some immaculate MGM (or Albert Speer) pipe dream. Rome in the 50s B.C. was a funky place, with every inch of marble decorated with colorful paintings, proclamations, and graffiti, and every twisting street jammed with busy artisans and merchants. From the palatial villas on the Palatine Hill to the polluted alleys of the Aventine, where the poor scraped by in five- and six-story tenements that were cesspools below and firetraps above, the whole city is conjured with marvelous verisimilitude. The same is true of the props and costumes, from the women's looms to the soldiers' leather cuirasses and brass helmets. All were made by skilled Italian artisans like Luca

Giampaoli, the latter-day Vulcan who hand-hammered Caesar's breastplate.

Skillful History

OF COURSE, NONE OF THIS WOULD matter if the screenplay and acting were on the historically tone-deaf level of most Hollywood fare. But here *Rome* compares favorably with *I, Claudius* (1976), the BBC's brilliant adaptation of the Robert Graves novel about the vexed problem of succession under the first four emperors; and with *Julius Caesar* (2003), a little known but fine miniseries directed by Uli Edel for Turner Network Television, which among other charms features a stirring reenactment of the battle of Alesia, in which Caesar's army of 55,000 outfoxed 250,000 Gauls led by the great shaggy Vercingetorix.

If it's battles you want, then don't miss the first episode of *Rome*, which opens with a brief but authentic depiction of the Legio XIII Gemina waging the grimly efficient warfare that enabled the Romans to conquer wild-and-woolly foes like the Gauls, whose manner of fighting was, shall we say, freestyle. This sequence shows such Roman techniques as the sword-thrust through a tightly packed wall of shields, and the

constant rotation of fresh troops to the deadly front line. Unfortunately, someone was pinching the *denarii*, because in the whole 12 hours there is no comparable battle scene, only a clash in the civil war between Caesar and Pompey that, after an impressive build-up, comes as a major let-down, a cheesy blur that evokes not history but the History Channel.

But if it's compelling characters you crave, and the aroma of truth found in good historical fiction, then don't miss a single hour of *Rome*. To start with the wholly fictional characters, the most accessible are probably two soldiers who begin as enemies and slowly become comrades: the severe centurion Lucius Vorenus (Kevin McKidd) and the brash infantryman Titus Pullo (Ray Stevenson). (These two names are mentioned in Caesar's *Gallic Commentaries*, but the characters are invented.) Vorenus is an old-fashioned fellow, whose Stoic *virtus* and Republican sympathies harden him to his family after long separation, but also outclass the eroding *dignitas* of most of the patricians he meets. Pullo is the son of a slave woman, so what matters to him is the *libertas* of the plebeian soldier.

Also fictionalized are two aristocratic women, Servilia of the Junii, mother of Marcus Junius Brutus (yes, *that* Brutus) and (a few rungs down the social ladder) Atia of the Julii, niece of Julius Caesar and mother of Octavia (later wife of Mark Antony, spurned for Cleopatra) and Octavian (later Augustus, first emperor of Rome). The gloriously twisted soap opera that unfolds within, and between, these two households would be impossible to summarize here. But it's worth noting how well it reveals the political intrigues festering on the home front. Not since Livia in *I, Claudius* has the distaff side of Roman ruthlessness been so skillfully portrayed.

Both Servilia and Atia existed, but little is known about their lives. Servilia (Lindsay Duncan) is remembered for her lineage and for an affair that she had with Julius Caesar. Atia (Polly Walker) is just a name in the history books, so the writers have shrewdly transformed her from a low-profile Roman matron into a high-profile bombshell resembling Clodia Metelli, the patrician party animal whose numerous lovers included the poet Catullus. If there is a villain in *Rome*, it is probably Atia, whose promiscuity, nudity, and eager participation in a ritual sacrifice that drenches her with bull blood are highlighted in the first two episodes.

If you are one of those viewers who recoil at HBO-style sex and violence, then be warned that *Rome* contains a good dose of both. Is it gratuitous? Maybe a little. But, I am tempted to say, this is Rome! Staying with Atia for a moment, if I hadn't read Catullus' obscene, tender,

"The finest short biography of Mozart that I know—

incisive, insightful, and elegantly written. If I had to recommend one book that explained the man and his music, this would be it."

—Cliff Eisen,
Department of Music,
King's College London

"A splendid introduction to Mozart's life and works—

carefully organized, sensibly argued, and lucidly written. Rushton brings his vast knowledge of Mozart into the biographical arena and succeeds admirably in writing for both the layman and the connoisseur of Mozart's music."

—Simon P. Keefe,
Professor of Music at City University
London, and editor of *The Cambridge
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hilarious poems about Clodia (whom he called Lesbia, *sans* the modern connotation), and about the mating and quarreling habits of his fellow patricians more generally, I might have ascribed the more lurid bits in *Rome* to the cutthroat competitiveness of the cable TV industry. But no, stuff like this really happened, and should properly be ascribed to the cutthroat competitiveness of the Roman plutocracy.

Ancient Virtues

IF ROME HAS A WEAKNESS, IT IS THE same weakness that, in the view of Cato, Cicero, and other eminent anti-Caesarians, brought down the Republic: failure to respect the ancient aristocratic virtues. It is, of course, hardly surprising that aristocratic virtue should get short shrift on HBO, that bastion of Emmy-winning populism. The co-creators and executive producers of this series include four Americans (John Milius, Frank Doelger, William J. MacDonald, and HBO vice president Anne Thomopoulos). The talented writers and directors include veterans of such plebe-pleasing fare as *Sex and the City*, *Entourage*, and *Desperate Housewives*.

But one also finds a healthy supply of Brits, including director Michael Apted (president, since 2003, of the Directors Guild of America), co-creator and writer Bruno Heller, and almost all of the cast, including the formidable Irish actor Ciaran Hinds as Caesar and the enigmatic newcomer Max Pirkis as Octavian. These individuals are not aristocrats—heaven forbid! But coming as they do out of British theater, film, and TV, they know how to fake it. Ever since Shakespeare, Roman patricians have been speaking the Queen's English and plebeians Cockney. No one defends class distinctions any more, but as long as they remain embedded in the Brits' acting tradition, their Romans will come off as more convincing than ours.

All the more astonishing, then, to see Cato and Cicero come off as a scold and a fussbudget, respectively. Leaving aside the evidence that Cato drank too much and Cicero's finest moments were never quite as fine as his oratory made them sound, these two figures should be weighty enough to hold down the republican side of the argument—and here they are not. Cato (Karl Johnson) is a bony old grouch who makes a strong speech in the beginning but spends the rest of the time kvetching. When he

finally stabs himself at Utica, the music swells as if it were a big deal, but it is hard to know why, since this Cato is more dyspeptic than Stoic. As for Cicero, it was a mistake to cast David Bamber in the part. I hate to typecast actors, but if this was Bamber's big chance to leave behind his best known role, that of the insufferable Mr. Collins in the 1995 version of *Pride and Prejudice*, he blew it. Cicero was the world's greatest orator, not a country parson.

The Republic was tottering long before Julius Caesar gave it the final shove. But it did hold Rome together for nearly 500 years, and for much of that time it was the world's sole alternative to absolute monarchy. Cato's and Cicero's greatest fear was not that a gaggle of fat-cat senators would lose their perks (the main message here), but that Rome would succumb to being ruled in the same way as the Hellenistic kingdoms of the East: by despots with even more perks, among them the status of divinity and the right to demand not only obedience but worship.

Possessing Power

FOR OUR MODERN DIFFICULTY IN GRASPING the Republican cause, I blame Shakespeare, who, despite his even-handedness in *Julius Caesar*, was a monarchist. (I would be, too, if Queen Elizabeth liked my plays.) The conspirator Brutus may have been "the noblest Roman of them all," according to Mark Antony, but consider who is left standing after the unpleasantness following Caesar's assassination: not high-minded Brutus, the noble master of miscalculation, but low-key Octavian, the quiet little dude who ends up calling the shots. And here we arrive at the very finest part of *Rome*: its double portrait of the strong man who did not become emperor, and of the weak boy who did.

The relationship between Caesar and Octavian is not made explicit; there is no male-bonding scene where the older man adopts the younger as his son, gives him his name, and makes him his heir. In fact, they rarely meet. But their separateness only reinforces their standing as the two poles around which everything else revolves. This being a story about a cataclysmic power struggle, it is only natural to ask who really does, and does not, possess power. And while everyone's attention is rightly fixed on Caesar's ability to grasp the lightning and store it in his own private bottle, it gradually becomes evident that Octavian is studying to do the same, if only

in the microcosm of his family. Caesar may be up against Cato, Cicero, and Pompey, but Octavian is up against Atia and his sister, and it's hard to say which proving ground is more rigorous.

Was Octavian's upbringing dominated by a scheming, deceitful mother? I don't know, but given how he turned out, it could have been. Indeed, some clever feminist scholar should write a book about how the first Roman emperor owed his ascendancy less to masculine will than to feminine wiles.

How did Octavian subdue the nobility and the Senate? By convincing them that he was restoring the Republic. Unlike Marius, Sulla, Crassus, Pompey, and his great uncle Julius, he avoided grandiose titles, preferring to call himself *princeps* (first among equals), the title Cicero gave to Cato. In 27 B.C., after defeating Antony and Cleopatra (who also had a thing about titles, naming their two children Sun and Moon), Octavian made a great show of returning his accumulated powers to the *Senatus Populusque Romanus*. True to their ancient constitution, the Senate accepted. But to show their appreciation, they awarded their humble consul a province consisting of half the world, 20 legions, a crown (for his door, not his head), and (of course) a new and even more grandiose title: Caesar Augustus. In other words, Octavian managed to wrap them all around his little finger.

This Rome fan would like nothing better than to see the same cast and crew, building on the costs already sunk into that fabulous set, props, and costumes, produce a second, third, fourth, fifth, sixth, and seventh season, straight through to the conversion of Constantine. Imperial Rome has more ready-made storylines, full of lurid details, than even the most gifted HBO screenwriter has ever dreamed of. If HBO were a republic, I would head straight for the Campus Martius and cast my vote in the Ovile, where the Roman people used to elect their magistrates. But I won't get the chance, seeing as Augustus turned the Ovile into a venue for bread and circuses, reducing the *vox populi* to the roar of the mob. From the cheap seats, then, a thumbs-up: "Let Rome live!"

Martha Bayles, who teaches humanities at Boston College, joins the CRB as our columnist on television and film. Her film blog, *Serious Popcorn*, can be found at ArtsJournal.com. She is writing a book titled *The Ugly American: Losing the Global Culture War*.

CONSTITUTION OR TYRANNY

by Mark Helprin



IN FEAR OF A THOMAS, SCALIA, ROBERTS, ALITO ORIGINALIST COUP de main, and with extraordinary brilliance—for her—Senator Dianne Feinstein recently expressed this view of strict constructionism: “Women would not be provided equal protection under the Constitution, interracial marriages could be outlawed, schools could still be segregated and the principle of one man, one vote would not govern the way we elect our representatives.”

Leaving aside the bizarre notion that originalists fail to recognize that Constitutional amendments govern—which, of course, by the Constitution’s original command they do—her plaint is only the blunt tip of a long and freighted spear. Quite simply, the Left openly disdains the Constitution when it frustrates even the most transient of their preferences.

For them, it is a benighted 18th-century document that can be interpreted to mean the opposite of what it states, and is best elasticized into meaninglessness, the void of which they cover with a thatch of legislative decrees as thin as needles but as thick as fish in a crowded sea—a forest of forty, fifty, or sixty thousand closely leaved pages in which the fundamental powers of the people are lost and subsumed. This view comports with a Darwinian notion of the evolution of law, as in the English model that we did not choose; with a visceral distrust of tradition; with an interpretation of history that seeks even destructive progression and rejects even benevolent repetition; with hostility to certain principles of the Declaration of Independence and the Constitution, such as the recognition of rights pre-eminently in the individual; and with a frequently bitter disfavor of impediments to the bureaucratic drive or the immediate expression of popular will.

A case in point is the Left’s conviction that the 2000 presidential election was illegitimized by a constitutionally mandated electoral college that weighs votes unequally and thereby begs for abolition. By this logic, so does the Senate. So do the three branches of government, where a party with 51% of the vote may make 100% of the decisions. And so do the states. Is it fair, for example, that the people of Wyoming can make their own law, whereas the people of the Upper West Side must combine their aspirations with those of the primitive inhabitants of the Adirondacks?

In the 19th century, oil was transported in ships with hulls caulked to form a single chamber, and as their cargoes shifted with irresistible momentum these ships readily capsized. Naval architects then compartmentalized them so that their massive loads could not rush unchecked in reaction to the momentary condition of the sea. This is what the founders did in restraining the power of even self-government, and this is what those who recoil from the Constitution as it is actually written find most distressing.

In the name of efficiency, speed, and process, they chafe at those of its elements that frustrate the impulse of the moment, force compromise, or sidetrack action. But without these frustrations, which yet allow an energetic executive to act in time of emergency, we would find ourselves

in the presence of the kind of immediate, singular, untrammelled power of, for example, the king that George III might have become had he not been frustrated by the Magna Carta, the Common Law, Parliament, and the Atlantic Ocean.

THOUGH THEY CALL IT PROGRESSIVE, THEIR VISION OF GOVERNANCE predates the Constitution and favors the jealous power not of kings but, in their place, a kingly state in which the implicit ownership of all the realm is established not through vassalage but by an unlimited power of taxation, and in which corporate rights are vested not in feudal classes, guilds, aristocracy, and sects, but in race, ethnicity, and sex.

What stands in the way of this retrograde vision that would catapult Western civilization back to the autocracy, corporate rights, and cults of obedience from which it has gradually emerged over several thousand years? The Constitution, as it stands, a document that is by nature clarifying. Metaphorically, whereas the strict constructionist removes the accumulated scale so that original intent can be seen in depth and detail, advocates of a “living” Constitution bury it so deeply in layer upon layer that only the topmost gloss will govern according to the whims of the governors. And lest some jurist incapable of ordering principle over decree be forced to the embarrassment of ruling contrary to his prejudices, and thereby affirming the essence of law, they simply imagine a new Constitution every time they find it standing in the way.

Nor is strict construction, as it is often portrayed, inflexible or passionless, nor that these need be disqualifying. Because the Constitution can be amended, it is perfectly flexible, though not hurriedly so. The telling difference between the liberally elastic document and the conservatively amendable one is that the latter demands the consent of the governed rather than that of a small juridical elite. And if the life of the “living” Constitution emanates from the regulatory song of the bureaucratic state, the life of the real Constitution arises in the passion of the Declaration, the First Organic Law of the United States, the minder and conscience of a Constitution ratified in compromise and forced to delay but not to deny the implementation of the Declaration’s self-evident truths. The unparalleled language of the Declaration, forged in war, draws its force from its postulates and intent, and its postulates and intent are unequivocal, the guide stars of the nation and its Constitution, as Lincoln, if not Dianne Feinstein, would attest.

And contrary to the senator’s thoughtless accusation, it is the originalist view—Lincoln’s view, the view of the Union dead—that, in fact, guarantees equal treatment under the laws, the preservation of individual rights, and the continuance of the republican form of government. For with the Constitution as it is actually written, many political outcomes are possible, but with a Constitution that is imagined day by day and hour by hour, all politics are tyrannical.

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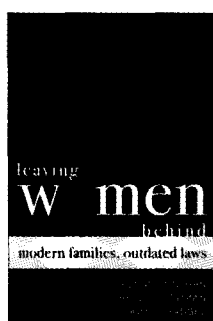
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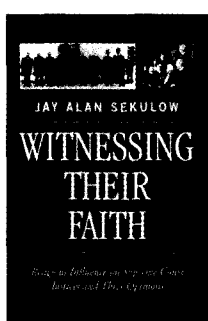
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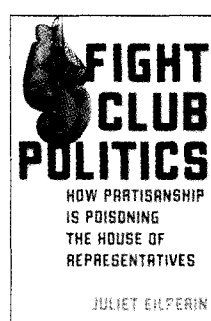
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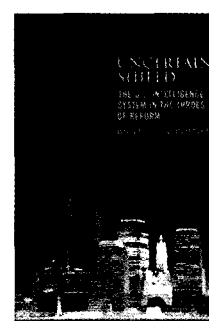
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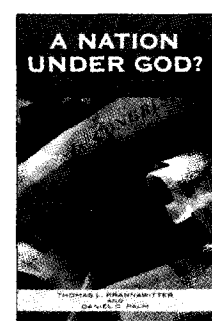
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